Sup. Ct. Appl. Civil Docket

Answered

SUPREME COURT OF THE UNITED STATES.

No. ~~150.~~ 79.

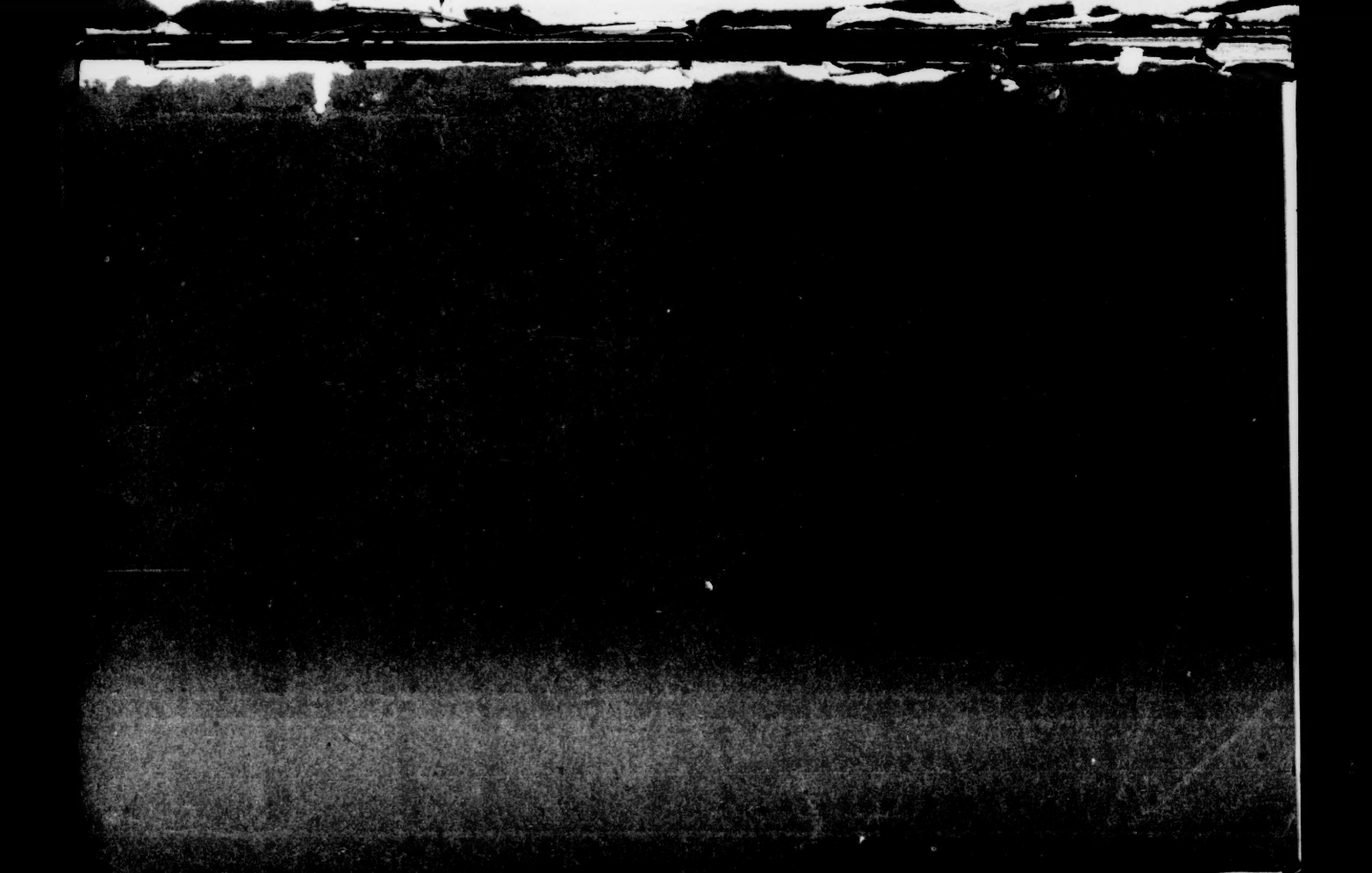
WILLIAM BOYCE, JOHN R. DUNLAP AND AL., APPEL'TS.,

vs.

JOHN HADLEY AND WILLIAM PYLE, FOR THEMSELVES AND OTHERS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

GOVERNMENT PRINTING OFFICE.



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1 At a circuit court of the United States within and for the seventh circuit and southern district of Ohio, begun and held at the court-house in Cincinnati, on the third Tuesday, being the twenty-first day of October, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States of America the eighty-seventh. Present: The honorable Noah H. Swayne and the honorable Humphrey H. Leavitt, judges of said court. Among other proceedings, then and there had, were the following, to wit:

Order of supreme court of Ohio.

JOHN HADLEY and WILLIAM PYLE, for themselves and others,
vs.
WILLIAM BOYCE, JOHN R. DUNLAP, and EMILY, his wife; LEVI PRUETT, and PEGGY, his wife; ISACHER FISHER, and VIRGINIA, his wife; GEORGE ARMSTRONG, and ELIZABETH, his wife; BENJAMIN MCKINNEY, WILLIAM BOYCE, JR, JOHN BOYCE, JR., ANNA KENNEIT, JAMES BOYCE, and SMITH BOYCE. } In Chancery.

Be it remembered that heretofore, to wit, on the tenth day of March, A. D. 1860, there was filed in the office of the clerk of the court aforesaid, an order of the supreme court of the State of Ohio in the premises, which order is in the words and figures following, to wit: State of Ohio, city of Columbus, supreme court of the State of Ohio, of the term of December, A. D. 1859. John Hadly, *et al.*, *vs.* John R. Dunlap *et al.*, in chancery.

2 Be it remembered that on this day this cause came on to be heard on the motion of the defendants (made in the courts below and reserved for decision here) to certify said cause to the circuit court of the United States for the southern district of Ohio, under the 12th section of the statute of the United States, passed September 24th, 1789, and was argued by counsel; and the court being advised in the premises, does find that a motion to certify said cause to the said circuit court under the statute aforesaid was duly filed in the common pleas court of Clinton county; that said motion was overruled, and afterwards lost from the files; that said cause was heard on its merits by the common pleas court, and by the defendants appealed to the district court for said county of Clinton; that the defendants filed therein another motion to certify said cause to the circuit court to supply the place of the motion so lost off the files, and that the district court reserved the decision of that motion to this court; and the court further finds that after the motion to certify made in the court of common pleas as aforesaid, said court ought to have certified said cause to the circuit court of the United States.

It is therefore ordered and adjudged that this cause be certified for hearing to the circuit court of the United States for the southern district of Ohio, and the clerk of this court is directed to certify the same accordingly, and to deliver said certificate and the papers in this cause to the counsel for the defendants, to be placed upon the files of said circuit court.

I, James H. Smith, clerk of the supreme court of Ohio, do hereby
3 certify that the foregoing order is truly taken and correctly copied from the journals of said court.

Witness my hand and the seal of said court, at Columbus, this 7th day of
[SEAL.] March, A. D. 1860.

JAS. H. SMITH, *Clerk S. C.*,
By H. S. MILLER, *Dep.*

Journal entry.

Afterwards, to wit, on the 5th day of November, A. D. 1860, it being of the October term of the court first aforesaid, for the year aforesaid, this cause came on for hearing, and thereupon the court ordered the following entry to be made in the premises, which entry is in the words and figures following, to wit: This cause was certified to this court by the supreme court of the State of Ohio, on the motion of the non-resident defendants made in the court of common pleas of Clinton county, Ohio, as by the certificate of said supreme court on file in said cause the same appears, the said motion of said defendants having been overruled by said court of common pleas, and the cause proceeded in until certified to this court as aforesaid. And upon such further proceedings as by the files certified to this court as aforesaid the same appears, the defendants aforesaid filed their answer after their said motion was overruled, as aforesaid, to the original bill of complaint, and the complainants filed their replication thereto; and testimony was taken and filed, and the complainants filed an amendment to their bill of complaint, and sundry exhibits were filed as documentary evidence to be used on the hearing; and doubts are entertained whether the said pleadings, testimony, and exhibits so being filed in the State courts after the said motion of the said defendants to certify the cause to this court was made, can be received and held by this court as a legiti-
4 mate part and parcel of the record and proceedings in said cause. It is now by the court here, at the instance and upon the request and with the consent of the complainants by their counsel, and of the said defendants by their counsel, ordered that the said pleadings, evidence, and exhibits so filed and certified be taken and received upon the further proceedings to be had in said cause as valid for all purposes as if the same had been filed in this court after the cause was certified within the rules or upon leave granted."

Bill.—"Document (A.")

The bill of complainants referred to in the foregoing order, and heretofore filed, to wit, on the 10th day of March, A. D. 1860, is in the words and figures following, to wit:

To the honorable the court of common pleas of the county of Clinton, and State of Ohio, in chancery sitting:

Your orators, John Hadley and William Pyle, of the county aforesaid, for themselves and for and on behalf of more than one hundred other persons, all claiming to be owners and in possession of parts of the following surveys of land in said county, namely, No. 2245, No. 2227, and No. 2246, all patented in the name of William Boyce, in whose name and for whom said surveys were entered and made, respectfully state: That said William Boyce, being the owner in fee of said several surveys of land, on or about the ninth day of December, in the year of our Lord one thousand eight hundred and eleven, at Fayette county, Kentucky, where he then resided, made his last will and testament, in which will he says, as follows: "As my estate lies in various parts of the world, and of various descriptions of property, so that I cannot make equal distributions in my will among the rest
5 of his children who have not as yet received their patrimony by pointing out to each their different kinds of property, in order to do equal justice to them and my loving wife, I give and bequeath every part of my estate, of every kind whatsoever, to be equally divided by sale or otherwise, as may seem best, between my loving wife and my children not heretofore named, and their heirs forever, having particular regard to the

education of any not yet educated. I constitute, ordain, and appoint my loving wife Elizabeth my executor, my sons John and William, and Thomas Wrenn, my son-in-law, the whole and sole executors of this my last will and testament. In case Thomas Wrenn should serve as an executor, after all the business of my estate is settled, and upon his rendering a fair and just account of his proceedings, then it is my wish he should be amply compensated for his trouble."

And your orators further charge that shortly after making said will, to wit, on or about the sixteenth day of January, in the year of our Lord one thousand eight hundred and twelve, the said William Boyce departed this life; and that at the February court, A. D. 1812, of the county court of said county of Fayette, Kentucky, said last will and testament was produced in court, and proved by the oaths of William Smith and Stephen Smith, the subscribing witnesses thereto. And that afterwards, at August court, A. D. 1812, of said county of Fayette, the said Elizabeth Boyce, the executrix named in said will, came into said county court of said county of Fayette, and took the oath required by the laws of said State of Kentucky, and gave bond in the penal sum of sixteen thousand dollars, with sureties, conditioned according to said laws. And that afterwards at court, A. D.

6 181 , the said John Boyce, one of the executors in said will named, took the oath required by the laws of Kentucky, and gave the requisite bond. Which said facts, namely, the proof of said will, the execution of bonds, and taking the requisite oath by said executrix and executor, will more fully appear by the record and proceedings of said county court of said county of Fayette, when the same shall be exhibited. But your orators charge that the other executors in said will named, namely, Thomas Wrenn and William Boyce, never gave bond, took the oath of office, or accepted of the burthen of executing said will; but, on the contrary, renounced the execution of said will.

And your orators further charge that after the proof of said will, and after giving bond and taking the oath aforesaid, the said executrix, Elizabeth Boyce, married one Gerard McKinney, of said county of Fayette; and that by such marriage the execution of said will, including the division of the estate of said deceased among his heirs, by sale or otherwise, devolved upon said Gerard McKinney and said John Boyce; the other executors in said will named having relinquished the execution of said will as aforesaid.

And your orators further charge that from the great difficulty of making partition of the estate of said deceased among the children of said deceased, who at the making of said will had not received their share of his estate, without resorting to a sale of said three surveys of land, it seemed best to said Elizabeth and John, and also to said Gerard McKinney, and all other persons, to make sale of said surveys of land in order to make equal division among said last-mentioned children and said Elizabeth, his widow.

7 That accordingly said Gerard McKinney and John Boyce, in the month of October, in the year of our Lord one thousand eight hundred and thirteen, visited the county of Clinton, and caused said surveys Nos. 2245 and 2227, which adjoined each other, to be laid off into lots to suit purchasers, and on or about the sixth day of November, in the year last aforesaid, sold about three hundred and seventy-eight acres of said last mentioned surveys to one William Hadley, late of said county of Clinton, deceased, for a large sum of money, to wit: for the sum of nineteen hundred dollars; and on or about the same day they sold to one Aaron Oxley, also late of said county of Clinton, deceased, about three hundred and fifty-six acres and two roods of said survey No. 2227 for about the sum of sixteen hundred dollars. That on or about November first, in the year 1814, they sold to one Richard Cast, late of said county, now deceased, about three

hundred acres of said surveys Nos. 2227 and 2245 for about the sum of nine hundred dollars. That about September 1, A. D. 1814, they sold to the said William Hadley, now deceased, about nine hundred and seventy two acres, for about the sum of twenty-nine hundred and sixteen dollars. And that on or about the seventh day of January, eighteen hundred and fifteen, they sold to one James Birdsall, late of said county of Clinton, deceased, the said survey No. 2246 for about the sum of one thousand six hundred and eighty-eight dollars and twelve and one-half cents.

And your orators further charge that said purchasers paid to McKinney and John Boyce on their respective purchases the following sums of money, and at the several times following, to wit:

8	1813—Nov. 6.—Aaron Oxley	$548	25
	" " William Hadley	1,000	00
1814—Jan.	12.—Richard Cast	500	00
" Sept.	1.—William Hadley	1,956	82
" Nov.	1.—Richard Cast	150	00
1815—Jan.	1.—James Birdsall	900	00
1816—March	25.—Aaron Oxley	592	66
" "	Richard Cast	291	79
" "	James Birdsall	859	87
" "	William Hadley	1,000	00
1818—March	25.—William Hadley	900	00

And your orators further state that said several purchasers, having fully paid for their respective purchases, the said Gerrard McKinney, for himself and said Elizabeth McKinney, his wife, late Elizabeth Boyce, the said executrix, and John Boyce, executor as aforesaid, conveyed as follows:

To William Hadley, March 19, 1814, about 972 in surveys Nos. 2245 and 2227; to Aaron Oxley, March 21, 1816, about 356 acres in survey No. 2227; to William Hadley, March 23, 1816, about 378 acres in surveys No. 2227 and 2245; to Richard Cast, March 23, 1816, about 300 acres in surveys Nos. 2227 and 2245; to James Birdsall, March 22, 1816, about 675 acres, being survey No. 2246; as will appear from their deeds for the same when they shall be exhibited.

And your orators further charge that though said several sums of money above mentioned were paid by said Hadley, Cast, Oxley, and Birdsall, to said Gerrard McKinney and John Boyce, yet the said moneys came into the hands of the said Elizabeth McKinney; that said McKinney and wife and said John Boyce received the same as assets belonging to the estate of said William Boyce, and that said McKinney and wife and John Boyce accounted for the same as such assets.

9 And your orators further charge that said Gerrard McKinney and Elizabeth, his wife, executrix, and John Boyce, executor, as aforesaid, at the October court, A. D 1824, of the county court of Fayette county, Kentucky, settled their accounts as such executrix and executor; that in such account they charged themselves with the said proceeds of the sale of said three surveys of land, at the several times and in the several amounts above stated; that said settlement was examined, approved, and ordered to be recorded, by said court, as will more fully and at large appear by a certified copy of the records and proceedings of said court when the same shall be exhibited; that at the time of such settlement said John Boyce and William Boyce, and Daniel Boyce, a son of said William Boyce, were of full age, and Emily, a daughter of said deceased, was within a few weeks of the age of twenty years of age; that said Emily was, and ever since the thirtieth day of April, 1822, had been, the wife of John R. Dunlap; and that said William Boyce, Daniel Boyce, and John R. Dunlap had full knowledge of said settle-

ment; that all of them resided less than four miles of the town of Lexington, in said county of Fayette, where said county court held its sittings, and where said settlement was made; and that neither the said William, Daniel, or Dunlap and wife, nor any one for them, nor any one else, made any objection to said settlement.

Your orators also charge that under and by virtue of the will of said William Boyce, dec'd, the said Elizabeth was entitled to one-seventh part of said moneys, and each of the following named children of said deceased were entitled to one-seventh, namely: John Boyce, William Boyce,
10 Daniel Boyce, Emily Dunlap, formerly Boyce, Peggy Pruett, wife of Levi Pruett, formerly Peggy Boyce, and Caroline Boyce, married to William Shriver on January 1, 1829; that said John Boyce was duly appointed guardian of the said William Boyce and acted as such, and that as such guardian he received the share of said William Boyce from said McKinney and wife, except the sum of one hundred and twenty-eight dollars and fifty-seven cents, which last sum of money was paid to said William Boyce June 3, 1818, after the said William became of full age.

Your orators further state that said Gerrard McKinney and wife were, about the date of said settlement, duly appointed guardian for said Daniel Boyce, Emily Boyce, Caroline Boyce, and Peggy Boyce; that they acted as such guardian for said Daniel until the fifteenth day of February, A. D. 1820, when the said John Boyce was duly appointed guardian for said Daniel; that said McKinney and wife accounted as such guardians for said Daniel part of the proceeds of said lands; that he presented to the county court of said Fayette county a true and accurate account current of their guardianship, in which were plainly entered said Daniel's share of said moneys, the date when received, the amount of money received, and the same was for lands sold in Ohio, as will more fully appear from a certified copy of said account current when the same shall be exhibited; that said McKinney and wife on or about October, to wit, A. D. 1820, being the county court of said Fayette county, settled said account; and the court, having examined said account and the vouchers in support thereof, found a balance in the hands of said McKinney and wife of two thousand five hundred and thirty-nine dollars and nine cents, which will also appear from the certified copy of said
11 account when the same shall be exhibited; that at the date of said settlement the said John Boyce was the guardian for said Daniel, duly appointed, yet neither said guardian nor any one else for said Daniel objected to said account or any part thereof; that after said settlement said McKinney and wife paid to said John Boyce, guardian for said Daniel, as aforesaid, the full amount so found to be due from said county court of Fayette county to said Daniel.

Your orators further charge that said McKinney and wife, being duly appointed guardian of said Caroline Boyce, as aforesaid, continued to act as such till about the month of August, A. D. 1828, when they settled their accounts with said county court of said county of Fayette; and by such settlement a balance was found in favor of Caroline, on the 1st day of January, A. D 1826, of $3,344 82; that in said account the said McKinney and wife charged themselves with the money arising from said surveys of land *as such;* to which account no objection was made for or by said Caroline, though the time and place of such settlement were known to said Caroline and her friends.

And your orators further charge that not only did said William Boyce, after he arrived at the age of twenty-one years, receive from said executors said sum of one hundred and twenty-eight dollars and fifty-seven cents, part and parcel of the money arising from the sale of said surveys of land, but he received from his said guardian, John Boyce, the entire balance of

his share of the money arising from the said sales of said surveys; that said Daniel Boyce, who has since deceased, in his lifetime received
12 from said John Boyce, his guardian, the full amount of his share of the purchase money received for said surveys of land; that said John R. Dunlap and wife have received the full amount of their part of the purchase-money for said surveys of land from said McKinney and wife; that said Levi Pruett and wife received from said McKinney and wife in money, and property accepted as money, their share of the purchase-money received for said surveys of land; and that *and that* said Shriver and wife, in the lifetime of said Caroline, received from said McKinney and wife their share of the purchase-money received for said surveys of land; that said sums of money were paid to said William, Daniel, Dunlap and wife, Pruet and wife, and Shrieve and wife, on settlement respectively, either with said John Boyce or McKinney and wife, or both said John Boyce and McKinney and wife; that at the time of such settlement all of said persons, namely, William Boyce, Daniel Boyce, Dunlap and wife, Pruet and wife, and Shrieve and wife, resided in said county of Fayette, within a few miles of the county seat of said county of Fayette; that all of them had convenient access to the records of the said settlement of said John Boyce, as executor as aforesaid, and said McKinney and wife, (the latter as executrix of said William Boyce, deceased,) and of the said settlement of said McKinney and wife as guardian for said Daniel Boyce and Caroline Boyce; that for the purposes of said settlement, said accounts were examined; and that said William, Daniel, Dunlap and wife, Pruet and wife, and Shrieve and wife, received their respective shares of the moneys arising from said sales of said surveys, with full knowledge that said moneys were received from the sale of said surveys of land; which said payments were made to said parties
13 respectively, either for their support or education while in minority, or to said William and Daniel after they arrived at full age, or to Dunlap and wife after marriage, said Pruet and wife after marriage, and said Shrieve and wife after marriage; that all of said parties executed and delivered receipts for the money so paid.

Your orators further charge that said McKinney has departed this life; that he died about the month of Jan., 1834; and after his death his papers came into the hands of the said John R. Dunlap, who stills holds the receipts for said several payments, unless the same have, since his taking possession of them, been lost or mislaid. That Elizabeth McKinney died about the month of June, 1833, leaving the following children; Daniel Boyce, Emily Dunlap, Peggy Pruet, Caroline Shrieve, Benjamin McKinney, Virginia McKinney, now wife of Isacher Fisher, Elizabeth McKinney, now wife of George Armstrong, and Jesse G. McKinney, who has since died intestate and without issue. That said Daniel Boyce died about the month of November, A. D. 1835, without issue; that he devised his entire estate during life to his wife, now wife of John Allen, of Fayette county, Kentucky; and after her death directed his estate to be divided between his brothers and sisters and his wife's brothers and sisters and their heirs, as follows: To his and her brothers and sisters of full blood two shares to each, and to his and her half-brothers and sisters one share, until the entire estate is divided. That said John Boyce and William Boyce, and Betsey Wilson, Patsey Moody and Nancy Wenn, if living, and their heirs, if deceased, the said Benjamin McKinney, Virginia Fisher, and said Elizabeth Armstrong, are the brothers and sisters of the half-blood to said Daniel Boyce, and said Emily
14 Dunlap and Peggy Pruet, are the sisters of the whole blood to said Daniel; and the brothers and sisters of the half-blood to said widow of said Daniel Boyce, dec'd, are unknown. That the will of said Daniel Boyce has been duly proved in the county court of said county of Fayette,

at December court, A. D. 1835, and said will was, at August term, A. D. 1851, of Clinton county court of common pleas, duly admitted to record, as will more fully appear by the records of said court when they shall be exhibited. That said John Boyce departed this life about the year A. D. 1842, intestate, leaving the following children and heirs: Martha, Jane, Anna, now Anna Kennet, William, John, Lucinda, and Smith; that said Martha died, leaving one child, a minor, whose name is unknown to your orators; that said heirs of said John Boyce all reside in the State of Kentucky, and are of full age, except said daughter of said Martha. That said Shrieve and wife are both dead; they died intestate, the said Caroline in the year 1833, and the said William in the year 1834, without issue.

And your orators further charge that said Dunlap and wife, said William Boyce, said Pruet and wife, Isachar Fisher and wife, said George Armstrong and wife, Benjamin McKinney, William Boyce, jr., John Boyce, Anna Kennett, Jane Boyce, and Smith Boyce, about the year 1846, commenced actions of ejectment against your orators and those whom they represent in the circuit court of the United States for the seventh circuit and district of Ohio, for said surveys of land; and such proceedings were had therein, that at the November term of said court A. D. 1851, a recovery was had by said plaintiffs against your orators and others whom they represent for an
15 undivided part of said surveys. Since which recovery said plaintiffs in ejectment have given it out in speeches that they will cause writs of possession to issue upon said judgments in ejectment, and they will turn your orators, and those whom they represent, out of possession of said premises.

And your orators further charge that they, and those whom they represent, claim by regular conveyances from said Hadley, Cast, Oxley, and Birdsall through the purchases and under the deeds aforesaid, by regular conveyances (with the exception herein after mentioned) of said three surveys of land by and through an unbroken chain of conveyances from said William Hadley, Cast, Oxley, and Birdsall, in severalty, as will appear from said deeds when the same shall be exhibited; and also of the share of said John Boyce, if any interest remained in him after making said sales, by virtue of the personal covenants of said John contained in said deeds. To which deeds and the covenants therein your orators refer, when the same shall be exhibited.

And your orators further charge that said John Boyce was in said county of Clinton at the time of making such sales, and at and after making said deeds; that said William Hadley, Oxley, Cast, and Birdsall took possession of their purchases, respectively, immediately after making the same; and that they, and those claiming under them, have remained in the actual and uninterrupted possession of the same ever since, claiming to be the true owners thereof, to the exclusion of all other persons whomsoever, and especially the devisees of said William Boyce, deceased; and that said
16 John Boyce in his lifetime was, and his heirs since his death, and said other devisees of said William Boyce, and those claiming under them, are barred from having or maintaining any writ of ejectment or other action for the recovery of possession, title, or claim of said John, in or to said surveys, by force of a certain statute of the State of Ohio, made and passed January 25, A. D. 1810, entitled "An act for the limitation of actions," and also by other acts of said State.

And your orators further represent that said William Hadley, said Richard Cast, Aaron Oxley, and James Birdsall, and those claiming under them, between the time of purchasing said surveys and the commencement of said action of ejectment, made lasting and valuable improvements upon said surveys, in all of the value of fifty thousand dollars, and paid a large

sum for taxes assessed on said surveys, amounting to ten thousand dollars. And they further state that one William McDonald brought suit in chancery in the circuit court of the United States in and for the district of Ohio, against said William Hadley, Richard Cast, Aaron Oxley, and others claiming under them, or some of them, claiming to own the whole of said survey No. 2245, and the greater part, if not the whole, of No. 2227, as part of one Daniel Anderson's survey, No. 1529. In which last-mentioned suit, said McDonald claimed that said No. 1529 was made Aug. 24, 1787, and duly recorded in the books of the principal surveyor of the land set apart by law for the satisfaction of military land warrants issued to the officers and soldiers of the Virginia line or continental establishment on the 13th day of May, A. D. 1788; that said record was due and sufficient notice to all subsequent locators of the existence of the same; that said No. 2245 and
17 No. 2227 were made February 20, 1793; that No. 2245 was patented by the United States on the 26th day of March, 1802, and No. 2227 patented April 5, 1802; which Anderson's said survey was not patented till May 19, 1817; that the owners of said surveys Nos. 2245 and 2227 held the legal title in trust for said McDonald and one Willliam Lytle, the true owners of said survey No. 1529. And your orators further state that one Duncan McArthur, on or about the day of 18 , filed in the court of common pleas of Clinton county, Ohio, his bill in chancery against the owners and holders of said surveys Nos. 2245 and 2227, and others, in which he claimed that he and one William Lytle were the owners of said survey 1529; in which said bill said owners of said Nos. 2245 and 5227, and others, were made parties, and in which the several facts set forth in the bill of said William McDonald in regard to said three last-mentioned surveys were alleged to be true, and praying that the holders of Nos. 2245 and 2227 may be compelled to convey all the land which they claim, which is included in survey No. 1529, to said complainant. Your orators state that such proceedings were had that in said case a decree was rendered in favor af said defendant, that said McArthur appealed to the supreme court of the State of Ohio; and that in said last-mentioned court the bill of said complainant was dismissed at his costs; that afterwards said McArthur conveyed his interest in said survey 1529 to said McDonald, who filed his bill in chancery in the circuit court of the United States as above stated.

And your orators further state that said Hadley and others, defendants in said suits of said McDonald and McArthur, expended large sums of money in the defence of said suits, in employing counsel, taking testi-
18 mony, and the like, and spent much time and labor in attending to said suits—in all a large sum of money, to wit: the sum of five thousand dollars.

All of which taxes, improvements upon said land, fees of counsel, costs, labor, and expenses of taking testimony ought to be paid your orators and those for whom this bill is filed by the defendants hereto.

And your orators further represent that said William Boyce, John R. Dunlap and wife, Levi Pruet and wife, Isachar Fisher and wife, George Armstrong and wife, Jessee G. McKinney, William Boyce, jr., John Boyce, the younger, Anna Kennett, Jane S. Boyce, Smith Boyce, Samuel Wilson, and Betsy his wife, late Betsy Boyce, Blanks Moody and Patsy his wife, late Boyce, Thomas Wrenn and Nancy his wife, are the brothers and sisters of the whole and of the half-blood of said Daniel Boyce, deceased; and that the brothers and sisters of the whole and the half-blood of the said wife of said Daniel Boyce, deceased, are unknown to your orators.

And your orators further charge that one Eli Hale, in his lifetime, now deceased, was the owner in fee of about six hundred acres of land, situate in said surveys Nos. 2245 and 2227, holding the same by regular and legal

conveyances from Hadley, Oxley, and Cast; he sold and conveyed the same to one William D. Tong, of the county of Warren, Ohio, by a good and sufficient deed; (which is hereby referred to when the same shall be exhibited;) that afterwards, to wit, on or about the first day of July, in the year of our Lord one thousand eight hundred and forty-two, the said Eli Hale exchanged other lands of him, said Eli, with said Tong, for the lands so sold and conveyed as aforesaid, and took from said Tong a title bond, binding
19 him to convey said whenever and so soon thereafter as said Eli should remove a certain incumberance off of a certain farm, known as the Mendenhall farm, situate in the counties of Clinton and Warren, containing about acres of land; which incumberance is a mortgage deed, executed by said Hale and wife, to William Pyle and Hiram Miller, on the 11th day of April, 1842, to secure them, as his sureties, in case they are compelled to pay to the Xenia bank about four thousand and thirty four dollars, which was due and owing from said Eli Hale to said bank, and for said debt said Pyle and Miller were bound as sureties, and on the further condition that said Hale should pay off and lift, and hand over to said Tong the said four promissory notes of said Tong, before given to said Hale, bearing date the 5th day of April, A. D. 1842, for the following sum : One for one thousand dollars, due on the 5th day of April, 1843; one for one thousand dollars, due on the fifth day of April, 1844; one for one thousand dollars, due the fifth day of April, 1845, with one year's interest thereon; and the other for one thousand dollars, due the 5th day of April, 1846, with two years' interest thereon; which said notes, with a mortgage given to secure them, had, at the time of giving said title bond, been assigned to the Lafayette bank of Cincinnati, to secure a claim from said Eli Hale to the said bank; all of which will more fully appear from said title bond, when the same shall be exhibited.

And your orators further charge that said Eli Hale departed this life intestate, on or about the month of September, in the year 1847, without having obtained a deed for said land; and that he was largely in debt; so much so, that it was necessary to sell the whole of his real and equitable estate to pay his debts; that administration on his estate was com-
20 mitted to Anne Hale, Lebras Campbell, and Abraham Hawkins; that said administrators filed a petition in the court of common pleas of said county of Clinton against the heirs of said Eli Hale and the said William D. Tong, praying for an order of said court authorizing them to sell the real estate of said deceased; and such proceedings were had therein that afterwards said court did by their order authorize and empower said administrators to sell said real and equitable estate of said Eli; that afterwards said administrators proceeded to sell the real and equitable estate of said Eli, situate in said surveys Nos. 2245 and 2227, and did sell the same as follows: To your petitioner, John Hadley, about 125 acres; to David Hadley, about 77¾ acres; to David Johnson, 11 acres; and to your orator, William Pyle, about 110 acres. Which said sales have been examined and approved by said court, as will appear by the records and proceedings thereof, when the same shall be exhibited; since which sale the said John John Hadley has assigned to his interest in said 125 acres of land to one David Johnson and Nathaniel Carpenter; said David Hadley has assigned his interest in said 77¾ acres of said land to said Ann Hale; and said Ann has assigned the same to one Daniel Hutchinson; and said David Johnson has assigned his interest in said one hundred and ten acres of land to the said John Hadley.

And your orators further state that, since said sale by said William D. Tong to said Eli Hale, as before stated, and since said sales by said administrators to said John Hadley, David Hadley, Nathaniel Carpenter, and

William Pyle, the said mortgage from said Eli Hale to said William
21 Pyle and Hiram Miller has been fully paid off and satisfied; and the said notes of the said William D. Tong, which had been assigned to the Lafayette bank, of Cincinnati, have been lifted from said bank and delivered to said William D. Tong; since which payment and satisfaction of said mortgage, and the redelivery of said notes to said Tong, the said John Hadley, Daniel Hutchinson, William Pyle, David Johnson, and Nathaniel Carpenter have called upon said William D. Tong, and requested him to convey said several tracts of land to the several persons holding the equitable title to the same, according to the terms and conditions of said title bond; but though said Tong declares his willingness to convey said lots of land by deeds without covenants of guaranty, he utterly refuses to convey the same by deeds with covenants of general warranty and to comply with said agreement on his part.

And your orators further state that said Tong refuses to unite in any suit or proceeding to be instituted or commenced for the purpose of establishing the rights or title to said surveys Nos. 2245 and 2227, in or by the claimants to the same now in occupation, though frequently solicited and urged to do so.

And your orators further state that the said actings and doings of said William Boyce, John R. Dunlap and Emily his wife, Levi Pruet and Peggy his wife, Isachar Fisher and Virginia his wife, George Armstrong and Elizabeth his wife, Benjamin McKinney, William Boyce, jr., John Boyce, the younger, Anna Kennett, Jane Boyce, and Smith Boyce, and the said William D. Tong; all of whom, with John Allen and wife, Samuel Wilson
22 and Betsey his wife, Blank Moody and Patsey his wife, and Thomas Wren, and Nancy his wife, and the brothers and sisters of the whole and of the half-blood of the said wife of the said Daniel Boyce, deceased, whose names and residence are unknown to your orators, are hereby made defendants hereto, are contrary to equity and good conscience, and tend greatly to the injury of your orators and those for whom they file this bill.

Your orators, therefore, pray process of subpœna against the said William D. Tong, and publication of notice as to the said other defendants named in this, your orators' said bill, non-residents as aforesaid, and such order of notice as to unknown devisees of said Daniel Boyce, dec'd, as to your honors shall seem meet, according to the statute in such case made and provided; that your honors will grant an injunction restraining such of said defendants as were parties to said action of ejectment from all further proceedings in said action of ejectment until hearing or further order, that said defendants may, to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid; and your orators further pray, that on final hearing, all of said defendants (except said Tong) may be decreed to convey to your orators and those for whom they file this bill, in fee simple all their interests, claims, and demands in and to said surveys of land with covenants of special warranty. That your orators and those for whom this bill is filed may be quieted in the possession of their respective pieces of land in said surveys; that the execution of the power of sale contained in the will
23 of the said William Boyce, dec'd, may be perfected; that a perpetual injunction be decreed against all further proceedings in said action of ejectment; and that your orators and those for whom this bill is filed, may have such other and further relief in the premises as to your honors shall seem meet. And as in duty, &c.,

"By R. B. HARLAN,
"*Att'y for Complainants.*"

Motion.

And on the same day, to wit, the tenth day of March, A. D. 1860, there was filed in court here the motion and bond of the respondents, which motion and bond are in the words and figures following, to wit:

To the honorable judges of the district court for Clinton county, Ohio:

The petition of William Boyce, John R. Dunlap, and Emily, his wife; Levi Pruett, and Peggy, his wife; Isachar Fisher, and Virginia, his wife; George Armstrong, and Elizabeth, his wife; Benjamin F. McKinney, William Boyce, jr., John Boyce, jr., Anna Kennett, Jane Boyce, and Smith Boyce, residing in the States of Kentucky and Missouri, respectfully represent that, on the second day of August, 1852, John Hadley & William Pyle, in the court of common pleas of Clinton county, Ohio, filed a petition in chancery against them; your petitioners represent that at time of the issuing of process against them of publication, your petitioners were, and still are, citizens of the States of Kentucky and Missouri, and that the matters in dispute in said suit exceeds the value of five hundred dollars exclusive of costs.

Your petitioners, therefore, pray that said suit may be removed for trial into the next circuit court of the United States within and for the southern district of Ohio, according to the act of Congress in such case made and provided. And your petitioners now offer John Probasco and Thomas
24 L. Carothers as their sureties for entering in said circuit court on the first day of its next session copies of the process against him, and also for their appearing there according to law.

J. PROBASCO, *Att'y & Sol. for Petitioners.*

Bond.

The bond above referred to is in the words and figures following, to wit: Know all men by these presents, that we, John Probasco & Thomas L. Carothers, are held and firmly bound unto John Hadley and William Pyle, in the penal sum of one thousand dollars, to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors and administrators. Sealed with our seals, and dated this 7th day of July, 1855.

The condition of the above obligation is such, that whereas the said William Boyce, John R. Dunlap, and Emily, his wife; Levi Pruett, and Peggy, his wife; Isachar Fisher, and Virginia, his wife; George Armstrong, and Elizabeth, his wife; Benjamin McKinney, William Boyce, Jr., John Boyce, Jr., Anna Kennett, Jane Boyce, and Smith Boyce, have heretofore applied to the common pleas court within and for the county of Clinton, in the State of Ohio, to remove into the circuit court of the United States for the district of Ohio, a certain suit now pending in this court on an appeal from said court of common pleas, wherein the said John Hadley and William Pyle are complainants, and the said William Boyce, John R Dunlap and the other aforenamed persons are defendants, which motion was refused, and this being the first session of the district court of Ohio held in the county of Clinton since said appeal, now, if the said John R. Dunlap,
25 William Boyce, and the other defendants above named, shall enter in said circuit court on the first day of its next session for the southern district of Ohio, copies of the process against them in said suit, and shall also there appear according to the act of Congress in such case made and provided, then this obligation shall be void; otherwise in full force and virtue in law.

In witness whereof, we have hereto set our hands and seals this 7th day of July, 1855.

JOHN PROBASCO. [SEAL.]
T. L. CAROTHERS. [SEAL.]

And on the same day, to wit, the 10th day of March, A. D. 1860, there was filed in the clerk's office of said court the following affidavit for publication of notice, which affidavit is in the words and figures following, to wit:

Affidavit for publication of notice.

JOHN HADLEY, *et al.*, *vs.* JOHN R. DUNLAP, *et al.* } Com. pleas, in chancery.

R. B. Harlan having been first duly sworn, on his oath says, that John R. Dunlap, and Emily, his wife; Levi Pruett, and Margaret, his wife; William Boyce, Benjamin McKinney, Isachar Fisher, and Virginia, his wife; George Armstrong, and Elizabeth, his wife; John Allen, and wife; Martha Boyce, Jane Boyce, Anna Kennith, William Boyce, jr., John Boyce, Lucinda Boyce, and Smith Boyce, are not residents of the State of Ohio, as he is informed and verily believes to be true, and that the place of the residence of Samuel Wilson, Betsy, his wife; Blanks Moody, and Patsy, his wife; and Thomas Wrenn, and Nancy, his wife, and the brothers and sisters of the whole and of the half-blood of the wife of Daniel Boyce, deceased, are unknown to this affiant, and he verily believes to the complainants in this case.

R. B. HARLAN.

Sworn to and subscribed in open court Sept. 15, 1852.

C. A. OSBORN, *Clerk.*

Upon said affidavit is the following indorsement, to wit:

"Let publication of notice be made for 6 weeks in a newspaper printed and of general circulation in Clinton county.

"WM. A. ROGERS, *Judge.*"

25½ And on the same day, to wit, the 10th of March, A. D. 1860, there was filed in court here the notice to non-resident defendants and the affidavit of printer thereto; which notice and affidavit are in the words and figures following, to wit:

Notice.

Clinton common pleas.

JOHN HADLEY and WILLIAM PYLE *vs.* JOHN R. DUNLAP *et al.* } In chancery.

John R. Dunlap and Emily his wife, Levi Pruet and Margaret his wife, William Boyce, Benjamin McKinney, Isaachar Fisher and Virginia his wife, George Armstrong and Elizabeth his wife, John Allen and his wife, Martha Boyce, Jane Boyce, Ann Kennet, William Boyce, jr., John Boyce, Lucinda Boyce, Smith Boyce, Samuel Wilson and Betsy his wife, Blanks Moody and Patsy his wife, Thomas Wrenn and Nancy his wife, and the brothers and sisters of the half-blood and the brothers and sisters of the whole blood of the wife of Daniel Boyce, dec'd, now wife of John Allen, of Fayette county, Kentucky, are hereby notified that, on the 2d day of August, A. D. 1852, John Hadley and William Pyle, for themselves and more than one hundred other persons, all claiming to be owners and in possession of

26 parts of three surveys of land in Clinton county, Ohio, Nos. 2245, 2227, and 2244, filed in the office of the clerk of the court of common pleas within and for said county their bill in chancery, in which they claim that they and those whom they represent are the owners in fee and in possession of the above-mentioned surveys of land, and charging, among other things, that William Boyce was the owner of said survey; that he made his will, in which he directed said lands to be sold, and departed this life in 1812; that his executors sold said lands to William Hadley, Aaron Oxley, Richard Cast, and James Birdsall; that the purchase-money, amounting to near $9,000, was paid to the executors from 1813 to 1818, inclusive; that the executors have fully accounted for the money and have paid it over to the devisees of said William Boyce, deceased, and have conveyed said lands to said Hadley, Oxley, Cast, and Birdsall; that the devisees of said Boyce have commenced actions of ejectment in the circuit court of Ohio, and recovered an undivided part of said lands. The object and prayer of the bill is, that all proceedings in said action of ejectment may be perpetually enjoined; that the devisees of said William Boyce, dec'd, and all claiming under them, may be compelled to convey to said complainants, and those whom they represent, all their interest in said lands in fee; that complainants, and those whom they represent, may be quieted in the possession of their respective pieces of said lands; that the execution of the power of sale contained in the will of said William Boyce, dec'd, may be perfected, and for general relief.

And it appearing to the court that said John R. Dunlap and Emily
27 his wife, Levi Pruet and Margaret his wife, William Boyce, Benjamin McKinney, Isachar Fisher and Virginia his wife, George Armstrong and Elizabeth his wife, John Allen and wife, late widow of Daniel Boyce, dec'd, Martha Boyce, Jane Boyce, Anna Kennet, William Boyce, jr., John Boyce, Lucinda Boyce, and Smith Boyce are not residents of the State of Ohio; and that the residence of Samuel Wilson and Betsy his wife, Blanks Moody and Patsey his wife, Thomas Wrenn and Nancy his wife, and the brothers and sisters of the whole blood and brothers and sisters of the half-blood of the widow of Daniel Boyce, dec'd, now the wife of John Allen, are unknown.

It is therefore ordered, that notice of the filing of this bill and of the pendency of this suit be given said last-mentioned defendants by publishing the same in some newspaper of general circulation in Clinton county for six consecutive weeks.

Notice is therefore hereby given to said John R. Dunlap and Emily his wife, Levi Pruet and Margaret his wife, William Boyce, Benjamin McKinney, Isachar Fisher and Virginia his wife, George Armstrong and Elizabeth his wife, John Allen and his wife, Martha Boyce, Jane Boyce, Anna Kennet, William Boyce, jr., John Boyce, Lucinda Boyce, Smith Boyce, Samuel Wilson and Betsy his wife, Blanks Moodey and Patsey his wife, Thomas Wrenn and Nancy his wife, and the brothers and sisters of the half-blood and the brothers and sisters of the whole blood of the wife of Daniel Boyce, dec'd, now wife of John Allen, of Fayette county, Kentucky, that unless they appear and plead, answer, or demur to said bill
28 within sixty days from the rising of the next term of this court, the same bill and the matters therein contained will be taken as confessed, and a decree entered accordingly.

C. N. OSBORN, *Clerk.*
R. B HARLAN, *Sol. for Compl'nts.*

Affidavit.

The affidavit of the printer to the foregoing notice is in the words and figures following, to wit:

Court of common pleas.

STATE OF OHIO, *Clinton county, ss:*

Before me personally appeared the undersigned who, being duly sworn, says that he is one of the proprietors of the "Clinton Republican," a newspaper printed in Wilmington, and of general circulation in the county of Clinton; and that the annexed advertisement has been published for at least 6 consecutive weeks, commencing on the 23d day of Sept., 1862.

W. B. FISHER.

Sworn to and subscribed before me this 3d day of Nov., 1862.

C. N. OSBORN, *Clerk.*

And on the same day, to wit, the 10th day of March, A. D. 1860, there was filed in the clerk's office of said court the summons served on Wm. D. Tong; which summons is in the words and figures following, to wit:

Summons.—"Document (B.")

THE STATE OF OHIO, *Clinton county, ss:*

To the sheriff of Warren county, greeting:

We command you to summon William D. Tong to appear before the judge of our court of common pleas at the court-house, in the town of Wilmington, on the first day of next term, 1852, to answer a petition in chancery exhibited against John R. Dunlap and others by John Hadley and William Pyle for themselves and others; and this he shall in no wise omit, under the penalty of one thousand dollars, and have then and there this writ:

Witness C. N. Osborn, clerk of our said court at the court-house this second day of August, 1852.

[SEAL.]

C. N. OSBORN, *Clerk.*

29 On said writ was the following indorsement, to wit:

Return.

Served on the defendant, Tong, by leaving a true copy of this writ at his usual place of residence, he being absent.

CHAS. A. SMITH, *Sh'ff War. co., O.*

And on the same day, to wit, the 10th day of March, A. D. 1860, there was filed in the office of the clerk of the court aforesaid the answer of the respondents; which answer is in the words and figures following, to wit:

Answer.—"Document (C.")

The joint answer of William Boyce, John R. Dunlap and Emily his wife, Levi Pruett and Peggy his wife, Isacher Fisher and Virginia his wife, George Armstrong and Elizabeth his wife, Benjamin McKinney, William Boyce, jr., John Boyce, jr., Anna Kennett, Jane Boyce, and Smith Boyce to the bill of complaint of John Hadley and William Pyle.

These respondents, none of whom are residents or citizens of the State of Ohio, hereby protesting against the trial of their rights in this tribunal, and not hereby waiving any right as citizens and residents of other States to remove this cause to the circuit court of the United States, and hereby also claiming the benefit of a demurrer to said bill, both because of the misjoinder of the several distinct interests named therein and of parties having no such interests as can be properly joined in one bill, answering, say, that their ancestor, William Boyce, was the owner of the surveys named in

said bill, and that he died and made his will as therein stated. They also admit that said will was duly admitted to probate, and that the executor and executrix named were duly qualified. But they deny that the other nominees ever renounced the executorship. Respondents also admit
30 the marriage of said Elizabeth Boyce with Gerrard McKinney. They deny that said Gerrard McKinney, by said marriage, acquired any power over the estate devised to respondents. Respondents do not know, but from information believe, that said McKinney did come to Ohio about the time named and caused said surveys to be subdivided, and they suppose he did undertake to sell their lands without any right or authority whatsoever, and they suppose that he did undertake to sell the quantity named in the bill to William Hadley, and probably for the sum received. They suppose, also, that sales were made to Aaron Oxley, Richard Cast, James Birdsall. Upon this subject respondents have no knowledge whatever, nor can they state the sums paid by each, for of the whole transaction, when it took place, they were entirely ignorant, not only because they were living remote from the land in another State, but because they were then infants, and some of respondents were not then born. Having no knowledge of the transaction they can neither admit or deny; but as there can be no motive to misrepresent upon that subject, respondents do not call for proof upon said subject of sale.

Respondents do not admit that said Gerard McKinney ever acted for Elizabeth Boyce in any of said sales or in receiving any part of the purchase-money, nor do they admit that said money ever came to the hands of Elizabeth McKinney, or were accounted for as assets, to the knowledge of these respondents.

Respondents suppose the settlement by said executor and executrix is truly stated, and they believe account shows that they charge them-
31 selves with said sales of land.

Respondent William Boyce admits for himself that about the time he became of age he received some money, but how much he cannot now recollect, which was said to have come from the sale of Ohio lands. He knew nothing of the circumstances of the sale, nor to whom the land was sold. He knew not whether authority had been obtained in Ohio, or by what authority the land had been sold. Nor was he cognizant of the settlement alleged to have been made in Fayette county, Kentucky. What money he received was given to him like all other personal property. Respondent states that he did not then, nor has he ever since, by any act or word approved, confirmed, or ratified any sales made by Gerard McKinney. He was never asked to do any such thing, nor did he ever contemplate any affirmance or recognition of said sales.

Respondents Dunlap and wife admit that after their intermarriage there was paid to said Dunlap nominally the sum of $1,237 36 on her father's estate. Said Dunlap states that said amount was paid to him in bonds on insolvent persons, some of which, after great trouble, he collected in trade and some in notes on the bank of the commonwealth of Kentucky, worth about fifty cents on the dollar. Respondents had no knowledge of the authority upon which said sales were made, nor any knowledge of the settlements made by the executor and executrix of said estate. Respondent Emily pleads and sets up also that when her husband received said sum of
32 $1,237 36 she was an infant under twenty-one years of age, and a married woman. That they have never done any act or deed to affirm said sale. How much, if any, of said $1,237 36 was the proceeds of the sale of said land they do not know.

Respondents state with respect to the papers mentioned in said bill that a negro boy left papers said to be the papers of Gerard McKinney

at their house. They were put in a trunk and locked up. They have never been examined or opened by either of them. Respondent states that they do not know what they contain, but any one interested is at full liberty to examine them.

Responnents Pruitt and wife admit that said Pruitt received nominally about $1,200 in property, which was about $300 more than it was worth, as part of her father's estate. They were not privy to, nor had they any knowledge of said settlement, nor do they know how much, if any, of said $1,200, resulted from the sales of the Ohio lands. Indeed, neither said Pruett nor wife knew of such sales.

They have never in any manner sanctioned or approved, ratified or confirmed, said sales. Said respondent Peggy Pruitt also sets up by way of plea that when said property was received by her husband she was under the disability of infancy and coverture.

Respondents think it probable that the husband of Caroline Shrieve received money as her portion of said estate; how much they do not know, but probably about the same amount received by said Dunlap and Pruitt.

Said Caroline was also under the disability of infancy and cover-
33 ture at said time. Respondents cannot state anything with respect to said Daniel Boyce, dec'd. Respondents state, in answer to said bill, that they had no knowledge of the circumstances of said sale. They knew, simply as children, that land in Ohio had been sold. To whom sold, and by what authority, were matters about which they were in entire ignorance, nor did they ever become possessed of a knowledge of their rights until a short time before the action of ejectment was brought, when, learning that their property had been illegally and unjustly sold, they prosecuted their action of ejectment in the circuit court of the United States for Ohio, and recovered, because there was no authority in the will of their deceased father to sell said property. Respondents state that said Gerard McKinney had been insolvent many years before his death, and in these circumstances received from him what they could get as their share of the estate of their father; what they did receive was not received as a confirmation of his sales, for they did not know anything on the subject of the illegality of said proceedings. Respondents admit that it is their purpose to issue execution on their judgment in ejectment to obtain possession of said land.

Respondents supposed it to be true that lasting and valuable improvements have been made upon said lands, the value thereof these respondents do not know; said complainants have also occupied said premises, and are responsible for rents to an amount perhaps equal to or greater than said improvements.

34 Respondents answering that they have no knowledge of any matters stated in said bill which they have not answered. They, therefore, neither admit or deny any such statements, and having fully answered, they pray to be hence dismissed with their reasonable costs.

Wm. Boyce,	Elizabeth Armstrong,
J. R. Dunlap,	B. McKinney,
Emily Dunlap,	William Boyce, jr.,
Levi Pruett,	John Boyce,
Peggy Pruitt,	Anna Kennett,
Isacher Fisher,	Jane Boyce,
Virginia Fisher,	Smith Boyce,
George Armstrong,	

Defendants.

Robertson, Mickle, & Probasco,
Sol's for defendants' heirs and devisees of Wm. Boyce, dec'd.

35 And on the same day, to wit, the 10th day of March, A. D. 1860, there was filed in the clerk's office of the clerk of the court aforesaid, the answer of W. D. Tonge in the premises, which answer is in the words and figures following, to wit:

Answer of W. D. Tonge.

The separate answer of William D. Tonge, one of the defendants in the bill of complaint exhibited against him and others in the court of common pleas for Clinton county, Ohio, by John Hadley, and William Pyle, and others.

"*Document (D.")*

This defendant saving himself &c., for answer to said bill of complaint exhibited against him and others by said Hadly, Pyle, &c., as aforesaid, or to so much thereof, and to such parts thereof as he is advised is material or necessary for him to make answer unto, he answers and says, that the only knowledge this defendant has of a great part or portion of the many averments and allegations alleged and set forth in complainants' said bill of complaint, is derived from the face of said bill, and from the oral declarations of the parties plaintiffs therein named; and from any knowledge this def't has, it may be true, as taken and averred in said bill, that complainants are in the possession claiming title to parts of surveys Nos. 2245, 2227, patented in the name of William Boyce; that said Boyce was a resident of Fayette co., Kentucky; made his last will &c., and departed this life at the time and place stated in bill; that his widow, Elizabeth, and John Boyce, executrix and executor thereof, caused said will to be admitted to probate according to the laws of said State of Kentucky; that afterwards, said Elizabeth intermarried with one Gerrard McKinney, who, in conjunction with said Boyce and Elizabeth, made sale of said surveys of land,
36 collected from the purchasers the whole amount of the purchase-money, made deeds to the purchasers, settled up entirely said estate before the proper court in said county of Fayette, in the State of Kentucky, aforesaid; and on such settlement distributed the whole proceeds of said sales and estates according to the provisions of said will among the various devisees and heirs-at-law of the said William Boyce; and that the legal rights of all in interest by or under said will were legally and properly secured.

This defendant, in further answering, admits that Eli Hale, in his his lifetime was the owner and in the possession of parts of surveys Nos. 2245, 2227; but how many acres in each or both of said surveys this defendant has no certain knowledge; that def't entered into an arrangement with said Eli Hale on or about the fifth day of April, 1842, for the purchase of the home farm of said Hale, being the same described in a certain deed of conveyance executed and delivered by said Eli Hale and wife to this def't of the date last above mentioned, and which deed will be exhibited on the hearing hereof; that at the time of said sale and purchase, said Hale was much in debt, and greatly embarassed, so much so, that he felt himself compelled to make sale of his home farm to relieve himself from his pressing embarassments; that def't purchased said farm at the price and consideration of ten thousand dollars, six thousand of which sum was paid by def't to said Hale, the sum of four thousand still remaining unpaid on said farm. Defendant gave to Eli Hale his four several promissory notes as stated in said bill of complaint, which promissory notes for the balance of the purchase-money on said farm was by Eli Hale, assignee, and
37 transferred to the La Fayette Bank of Cincinnati, and whether said notes are still held by the bank or not this defendant does not know,

as he has never seen them since they were executed and delivered to said Hale; they have never been presented to this defendant, and whether said notes have ever been cancelled and paid off or not def't does not know.

This defendant further says, in answer to said bill of complaint, that said Eli Hale, prior to the fifth of July, 1842, from some supposed favorable time in his affairs, thought he could get along and still hold on to his home farm aforesaid, strongly solicited def't to take in exchange another farm estimated at the sum of six thousand dollars, and which would precisely cover the amount of money he had paid said Hale on said home farm, aside from the promissory notes before referred to; that finally def't assented to the exchange, and took a deed of conveyance from said Hale and wife therefor, dated on or about the first of July, 1842, and which will be exhibited on the trial hereof; that at the date of said exchange and deed there was an encumbrance by deed of mortgage given by Hale and wife to one William Pyle and Joseph Miller, to secure them as his sureties for the sum of about four thousand and thirty-four dollars, in the Xenia Bank; that for the purpose of lifting said mortgage, said Hale paid on the Xenia Bank debt two thousand dollars; and this defendant, for purpose of assisting said Hale to liquidate said mortgage to said Pyle and Miller aforesaid, and draw the debt out of the Xenia Bank, executed a mortgage on the farm last above mentioned to the Life and Trust Company Bank, for the sum of two thou-
sand dollars, which was drawn for, and the two thousand dollars
38 appropriated by said Hale to the entire liquidation of said mortgage debt, which was fully cancelled, leaving the mortgage debt of two thousand dollars due the Trust Company, a lien on said farm, and which was in truth and in fact a part of the Xenia Bank debt, for which Pyle and Miller were security for Hale; that the effect of the whole transaction was merely to transfer two thousand dollars of the Xenia Bank to the Life and Trust Co., the whole of which two thousand dollars is still due and unpaid to the Life and Trust Co., aforesaid, secured by mortgage aforesaid, and which is fully explained by an agreement entered into by said Hale, dated on or about the 30th of June, 1847, which is referred to, marked A, and made a part of this answer, and is also referred to as a part of the title bond given by def't to reconvey to said Hale said home farm on the liquidation of said debt of two thousand dollars to the Trust Company, and the four promissory notes so transferred to the Lafayette Bank, aforesaid. When on the final payment and liquidation of all which, this defendant avers that it was the distinct understanding that he was by a proper conveyance to reinvest in said Hale, the bare, naked legal title to said farm without covenants of general warranty; that he believes Eli Hale, in his lifetime, and the administrators of said Eli Hale, deceased, since his death, or some one of them, have regularly paid the interest as it fell due on the Trust Company debt, but what disposition has been made of the Lafayette Bank debt aforesaid, or whether the notes of this def't for four thousand dollars has been paid, the notes lifted or not, or in whose possession they are if paid and lifted, this defendant does not know, as he has before stated.

This defendant further says, that long prior to, and up to the time
39 of the death of said Eli Hale, a warm personal friendship existed between said Hale and this defendant, mutually placing the most unlimited confidence in each other, and particularly in their business transactions, which made them careless; that the title bond referred to in said bill of complaint, was drawn by said Hale, or some one for him presented the same to defendant for his signature, and def't, without a very careful examination, signed and executed the same, well knowing that it was the distinct understanding of himself and said Hale, that no other kind of a conveyance should be executed by def't to said Hale than would simply

convey back to said Hale the naked legal title, and avers that said title bond does not set forth the true agreement between them in reference to said conveyance; and this def't submits to this honorable court, and insists that it would be manifestly unjust to this def't to be compelled to warrant by covenant of general warranty, and make himself liable on his warranty for the sum of ten thousand dollars, with the interest thereon, when the whole and sole consideration received by him from said Hale was the sum of six thousand dollars in a farm in exchange for the said home farm aforesaid, and which exchange was expressly made at the instance and earnest solicitation of said Hale; and that there is now the Trust Company debt, secured by mortgage, attaching as a lien for that amount, which debt and mortgage was created expressly for the benefit of said Hale, to enable him to pay off and discharge said two thousand dollars so drawn from the Trust Company aforesaid. Said Hale did actually pay off and fully discharge the mortgage held by said Pyle and Miller on said farm aforesaid, and
40 the Trust Company mortgage for said two thousand dollars is still a subsisting lien on said farm, making, in fact, the whole consideration as yet received by def't from said Hale or his representatives for the home farm only four thousand dollars; and this def't insists that no deed can be demanded of him, or reconveyance of any kind whatever to divest him of the legal title to said home farm until the Trust Company debt aforesaid, and his four promissory notes aforesaid, transferred by said Hale to the Lafayette Bank aforesaid, are fully paid off and discharged; and this def't, having fully answered, &c., prays to be hence dismissed with costs, &c.

WM. D. TONG.
By G. FOOS, *his Counsel.*

And on the same day, to wit, the 10th day of March, A. D. 1860, there was filed in the office of the clerk of the court aforesaid, the certificate of appeal in the premises; which certificate is in the words and figures following, to wit:

Certificate of appeal.

State of Ohio, Clinton county, court of common pleas. In chancery. November term, 1852, to wit, Nov. 10th, 1852.

JOHN HADLEY and WILLIAM PYLE *et al.*
vs.
JOHN R. DUNLAP *et al.*

On this day it appeared to the satisfaction of the court, from the affidavit of publication on file, that notice of the filing of the bill and pendency of the suit in this case has been given pursuant to the order herein made at the last term of this court.

November 30th, 1852.—This day came the said John R. Dunlap and Emily his wife, Levi Pruet and Margaret his wife, William Boyce, Benja-
41 min McKinney, Isachar Fisher and Virginia his wife, George Armstrong and Elizabeth his wife, John Allen and —— his wife, Martha Boyce, Jane Boyce, Ann Kennett, William Boyce, jr., John Boyce, Lucinda Boyce, Smith Boyce, Samuel Wilson and Betsey his wife, Blanks Moodey and Patsy his wife, Thomas Wrenn and Nancy his wife, and the brothers and sisters of the half-blood and the brothers and sisters of the whole blood of the wife of Daniel Boyce, deceased, now the wife of John Allen, of Fayette county, Kentucky, and William D. Tong, and filed their petition for the removal of this cause to the next circuit court of the United States within and for the district of Ohio; and the same having been heard and considered, it is the opinion of the court here, that the grounds for said application

are not sufficient in law to authorize this court to remove this cause to the said circuit court, according to the acts of Congress in such case made and provided. The motion for such removal is, therefore, overruled, at the costs of the applicants. And thereupon this cause was, by order of the court, continued until the 29th day of March next.

THE STATE OF OHIO, *Clinton county, ss:*

I, C. N. Osborn, clerk of the court of common pleas, within and for the county and State aforesaid, do hereby certify that the foregoing contains true copies of all the journal entries made in the cause therein named by said court at the November term thereof, A. D. 1852.

In testimony whereof, I herunto set my hand and affix the seal of said court this 8th day of December, 1856.

[SEAL.]

C. N. OSBORN, *Clerk.*

42 THE STATE OF OHIO, *Clinton county, ss:*

C. N. Osborn, being duly affirmed, says that he is the clerk of the court of common pleas of said county and State, and that the foregoing certificate was made by him as such clerk, and that the statements therein made are true.

C. N. OSBORN.

Sworn to and subscribed before me this 8th day of December, A. D. 1856.

A. McKAY, *Probate Judge, C. C. O.*

Jan'y 9, 1857.—I attach this paper as evidence of the entry of which it purports to be a copy, as it truly appears on the journal, for the reason that the name of Wm. D. Tong has been erased and an interlineation entered at the end of the *filed* copy of the same entry, whereby the filed copy is shown not to be a true copy as it now appears.

H. H. HUNTER.

Pleas at Wilmington before the Hon. William A. Rogers, judge of the court of common pleas within and for the county of Clinton and State of Ohio, on the seventh day of September, in the year of our Lord one thousand eight hundred and fifty two.

JOHN HADLEY and WILLIAM PYLE, for themselves and others, } In chancery.
vs.
JOHN R. DUNLAP and others. }

Be it remembered that heretofore, to wit, on the second day of August, in the year of our Lord one thousand eight hundred and fifty-two, John Hadley and William Pyle, for themselves and others, by R. B. Harlan, their counsel, deposited and filed in the office of the clerk of our said court here, their bill in chancery against John R. Dunlap and others, in the words and figures following, to wit:

Document (A.)

43 And thereupon was issued out of the office of the clerk of our said court here our writ of subpœna in chancery against William D. Tong, directed to the sheriff of Warren county, in the words and figures following, to wit:

Document (B.)

On which day, to wit, the seventh day of September, aforesaid, that is to say, on the seventh day of September, in the year of our Lord one thou-

sand eight hundred and fifty-two, before the judge aforesaid of our said court here at Wilmington, came the complainants aforesaid, by their said attorney and the sheriff of the county of Warren, aforesaid, to whom the aforesaid writ of subpœna was directed, and made return thereof to our said court here, indorsed in form following, to wit:

"Served the def't, Tong, by leaving a true copy of this writ at his usual place of residence, he being absent. Aug. 31, 1852.

"CHAS. A. SMITH, *Sh'ff War. Co., O.*"

And afterwards, in the term of September aforesaid, before the judge aforesaid of our said court here at Wilmington, came the complainants aforesaid, by their said counsel; and it appearing to the court, from the affidavit on file, that John R. Dunlap and Emily his wife, Levi Pruett and Margaret his wife, William Boyce, Benjamin McKinney, Isacher Fisher and Virginia his wife, George Armstrong and Elizabeth his wife, John Allen and wife, Martha Boyce, Jane Boyce, Anthony Kennitt, William Boyce, jr., John Boyce, Lucinda Boyce, and Smith Boyce are not residents of the State of Ohio; it also appearing to the court, from the affidavit on file, that the place of the residence of Samuel Wilson and Betsey his wife, Blank Moody and Patsey his wife, and Thomas Wrenn and Nancy his wife, are unknown to the complainants; it is therefore ordered, that notice of the filing of the bill and the pendency of this suit be given them by publication, in
44 accordance with the provisions of the statute in such case made and provided; and thereupon this cause is, by order of the court, continued until the second day of November next.

On which day, to wit, the second day of November aforesaid, that is to say, the second day of November, in the year of our Lord one thousand eight hundred and fifty-two, before the judge aforesaid of our said court here at Wilmington, came the complainants aforesaid, by their said counsel, and proved notice of the filing of the bill and pendency of this suit, in pursuance of the order herein made at the last term of this court.

Afterwards, in the term of November aforesaid, before the judge aforesaid of our said court here, came the said John R. Dunlap and Emily his wife, Levi Pruett and Margaret his wife, William Boyce, Benjamin McKinney, Isacher Fisher and Virginia his wife, George Armstrong and Elizabeth his wife, John Allen and his wife, Martha Boyce, Jane Boyce, Ann Kennett, William Boyce, jr., John Boyce, Lucinda Boyce, Samuel Wilson and Betsey his wife, Blanks Moody and Patsy his wife, Thomas Wren and Nancy his wife, and the brothers and sisters of the half-blood and the brothers and sisters of the whole blood of the wife of Daniel Boyce, dec'd, now the wife of John Allen, of Fayette county, Kentucky, and filed their petition and bond for the removal of this cause to the next circuit court of the United States within and for the district of Ohio; and the same having been heard and considered, it is the opinion of the court here, that the grounds for said application are not sufficient in law to authorize this court to remove this cause to said circuit court, according to the act of Congress in
45 such case made and provided. The motion for such removal is therefore overruled at the cost of the applicants; which motion and bond is not on file, they having been lost by W. A. Rogers, judge.

Whereupon this cause is, by order of the court, returned until the twenty-ninth day of March next.

On which day, to wit, the twenty-ninth day of March, aforesaid, that is to say, on the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and fifty-three, before the judge aforesaid of our said court here at Wilmington, came the parties aforesaid, by their said counsel,

and this cause is, by order of the court, continued until the sixteenth day of August next, with leave for the defendants to answer in twenty days.

Afterwards, to wit, on the twelfth day of April, in the year of our Lord one thousand eight hundred and fifty-three, the said defendants William Boyce, John R. Dunlap and Emily his wife, Levi Pruett and Peggy his wife, Isacher Fisher and Virginia his wife, George Armstrong and Elizabeth his wife, Benjamin McKinney, William Boyce, jr., John Boyce, jr., Anna Kennett, Jane Boyce, and Smith Boyce, by Robertson, Mickle and Probasco, deposited and filed in the office of the clerk of our said court here, their joint answer to the bill of the said complainants, in the words and figures following, to wit:

Document (C.)

And afterwards, to wit, on the third day of May, in the year of our Lord one thousand eight hundred and fifty-three, the said defendant, William D. Tong, by G. Foos, his counsel, deposited and filed in the office of the
46 clerk of our said court here his answer to the said bill of the said complainants, in the words and figures following, to wit:

Document (D.)

On which day, to wit, the sixteenth day of August, aforesaid, that is to say, on the sixteenth day of August, in the year of our Lord one thousand eight hundred and fifty-three, before the judge aforesaid of our said court here at Wilmington, came the parties aforesaid, by their said counsel, and this cause is by order of the court continued until the fifteenth day of November next, with leave for defendants to answer.

Afterwards, to wit, on the fourth day of October, in the year of our Lord one thousand eight hundred and fifty-three, the said defendants, William Boyce, J. R. Dunlap, Emily Dunlap, Levi Pruett, Peggy Pruett, Isacher Fisher, Virginia Fisher, George Armstrong, Elizabeth Armstrong, B. McKinney, William Boyce, jr., John Boyce, jr., Anna Kennett, Jane Boyce, and Smith Boyce, refiled their answer to the bill of the said complainants, in the words and figures following, to wit:

Document (C.)

On which day, to wit, the fifteenth day of November, aforesaid, that is to say, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and fifty-three, before the judge aforesaid of our said court here at Wilmington, came the parties aforesaid, by their said attorneys, and this cause is by order of the court continued until the twenty-eighth day of March next.

On which day, to wit, the twenty-eighth day of March, aforesaid, that is to say, on the twenty-eighth day of March, in the year of our Lord
47 one thousand eight hundred and fifty-four, before the judge aforesaid of our said court here at Wilmington, came the parties aforesaid, by their said counsel, and this cause came on to hearing upon the bill, answers, exhibits, and testimony, and was argued by counsel, on consideration whereof, it is the opinion of the court here that the law and equity of this cause is with the complainants and those whom they represent, and it appearing to the court here that the complainants and those whom they represent have the equitable title to possession of the lands described in the bill of the complainants, and that said complainants and those whom they represent have established their title to said lands. It is therefore ordered, adjudged, and decreed, that said defendants be, and the same are hereby, decreed to release their claims to said lands within thirty days from the rising of this

court; and it is further ordered, adjudged, and decreed, that said complainants be, and they are hereby, quieted in their respective possessions; and that said defendants be, and hereby are, enjoined from issuing writs of possession to obtain the possession of said lands.

And it is further ordered, adjudged, and decreed, that said defendants do, within thirty days from the rising of this court, pay the costs herein expended, and in default thereof that execution issue therefor, as upon judgments at law; the costs herein expended are taxed to forty-one dollars and fifty-five cents; appeal bond and certificate of appeal five dollars.

The defendants, by their counsel, gave notice that they would appeal from the decree aforesaid to the district court of the State of Ohio, next to
48 be holden within and for the county of Clinton; the court fix the amount of appeal bond in this case at three hundred dollars.

And in pursuance of the above motion the said defendants executed their appeal bond on the fifth day of May, in the year of our Lord one thousand eight hundred and fifty-four, with T. L. Carothers, security.

THE STATE OF OHIO, *Clinton county, ss:*

I, C. N. Osborn, clerk of the court of common pleas within and for the county and State aforesaid, do hereby certify that the foregoing contains a correct transcript of the docket and journal entries, including the final decree of our said court in said cause, and that the documents marked A, B, C, and D are the original pleadings and process in said cause.

In testimony whereof, I hereunto set my hand and affix the seal of said court, this 25th day of May, A. D. 1854.

[SEAL.]

C. N. OSBORN, *Clerk.*

And on the same day, to wit, on the 10th day of March, A. D. 1860, there was filed in court here the amended bill of the complainants, which amended bill is in the words and figures following, to wit:

Amended bill.

JOHN HADLEY and WILLIAM PYLE, suing for themselves and in behalf of more than one hundred other persons, *vs.* JOHN R. DUNLAP and EMILY, his wife, and others.	In chancery in the district court of Clinton county, Ohio.

By leave of the court, granted at the July term, A. D. 1856, the complainants come and amend their bill of complaint herein, and charge that they, and those in whose behalf this suit is prosecuted, are seized in severalty in different parcels of the entire quantity of said three surveys in the original bill mentioned in fee simple; and that they and those under
49 whom they derive their said title are and have been in actual possession and occupancy of said lands ever since the first day of April, A. D. 1816, and during a period of more than thirty (30) years, prior to the first day of October, A. D. 1846, claiming to be the true and lawful owners thereof in fee simple, as aforesaid, against all the world. Their said legal title being founded upon the said deeds of conveyance in the original bill referred to, made by the said John Boyce, as executor of William Boyce, dec'd, in conjunction with the said Gerard McKinney, the husband of Elizabeth, late Elizabeth Boyce, to the said *William Hadley*, *Aaron Oxley*, *Richard Cast*, and *James Birdsall*, and the possession of said grantees and those claiming under them had and held under said deeds.

They further aver and charge that the defendants, and those under whom

they claim, except the said executor, John Boyce, the devisees of William Boyce, the elder, deceased, were, at the time the adverse possession of said lands by the complainants, and those under whom they claim, as aforesaid, commence, and ever since hitherto residents of the State of Kentucky, and within the United States, but not residents within the State of Ohio; that although they were at the time said possession commenced infants, under the age of twenty-one years, yet they severally attained their ages of majority at the days and times mentioned, as follows: That is to say, the said devisee, Daniel Boyce, attained his age of majority on the 9th day of August, A. D. 1824, and survived to the 4th day of November, A. D. 1835, when he died.

The said devisee, William Boyce, attained his age of majority on the
50 5th day of May, 1817. The said devisee, Emily Dunlap, attained her age of majority on the 18th day of December, A. D. 1825, and was married to her present husband, John R. Dunlap, on the 30th day of April, A. D. 1822. The said devisee, Peggy Pruett, attained her age of majority on the 10th day of January, A. D. 1827, and was married to her present husband, Levi Pruett, on the 1st day of November, A. D. 1826. The said devisee, Caroline Shreeve, attained her age of majority on the 10th day of October, 1829, was married to Shreeve on the first day of January, A. D. 1829, and died on the 21st day of September, A. D. 1833.

The said devisees, John Boyce, and the said Elizabeth McKinney were, at the time said possession commenced, of full age; and the said Elizabeth (who also resided in the State of Kentucky at the time said possession commenced, and continued to reside there to the time of her death,) was, during all that time, a married woman, wife of the said Gerard McKinney, and died on the 22d day of June, A. D. 1833, leaving her said husband surviving her.

The complainants further aver and charge that the disability of coverture of the said Elizabeth McKinney, which ceased with her death, as aforesaid, so ceased more than ten years before the commencement of the said actions of ejectment in the circuit court of the United States, mentioned in the original bill, and that the disability of infancy of said other devisees also, each and all, ceased more than ten years before the commencement of said actions of ejectment; and by reason of the premises that the
51 possessory right, so acquired as aforesaid by the complainants, and those under whom they derive title, as aforesaid, having continued during a period of more than 21 years after the commencement thereof, as aforesaid, and during a period of more than ten years, as aforesaid, after the disability aforesaid ceased, had, before and at the time said actions of ejectment were commenced as aforesaid, ripened into and was a legal title in fee simple, and is now vested in the complainants and those for whose benefit they sue.

The complainants, therefore, charge and insist that being seized of the legal title in fee simple and in possession of said lands, and the defendants asserting an adverse claim of title thereto, as stated and set forth in the original bill, are in equity, according to the statute in such cases made and provided, entitled to demand and require the defendants to release to them all claim of title to said lands.

They therefore pray that said defendants be decreed to release to the complainants for their own use, and in trust for the use of all others for whose benefit they prosecute this suit, all their title and claim to said lands, to wit, the said three military surveys, aforesaid; and that said defendants, severally, be perpetually and forever injoined from proceeding at law in their said actions of ejectment to take possession of said lands or any part thereof. Or if, in the opinion of the court, the complainants, and those under whom they claim, are not vested with the legal title to said lands for

any reason, then, and in that case, they pray, as they have done in their original bill, that the defendants, in execution of the contracts of sale
52 made by the said executors of William Boyce, dec'd, or of the said John Boyce, one of said executors, as evidenced by the said deeds to said purchasers, and ratified by the said executor, Elizabeth, be decreed to release to the complainants, and others for whose use they sue, all their right, title, and estate in and to said lands, and that they be enjoined as aforesaid. And the complainants pray such other and further relief as may be equitable. And, as in duty bound, they will ever pray, &c.

H. STANBERY and
H. H. HUNTER,
Sol'rs for Compl'ts.

And on the same day, to wit, the tenth day of March, A. D. 1860, there was filed in court here, the certified copy of the order of reservation; which copy is in the words and figures following, to wit:

Certified copy of the order of reservation.

The State of Ohio, Clinton county, district court of the State of Ohio.

JOHN HADLEY *et al.* vs. JOHN R. DUNLAP *et al.* } In chancery, July term, 1856, to wit, July 11, 1856.

This cause came to be heard upon the motion and petition of John R. Dunlap and the other non-resident defendants in the court of common pleas of Clinton county, Ohio, the amount in controversy having been shown to exceed five hundred dollars in value, and the bond in the common pleas and district court having been heretofore approved by said courts, said non-residents having, upon such proof, petition, and bond demanded of the court to certify this cause to the circuit court of the United States in and for the seventh circuit and southern district of Ohio, according to the act of Congress in such case made and provided.

And at the same time the complainants move the court for leave to amend their bill of complaint, and having submitted in writing the amend-
53 ment by them proposed, and the court finding that there are questions of importance and difficulty arising in the premises to be decided, it is, therefore, on motion of the complainants, ordered by the court, that this cause, including the motions and demurrer to the petition of complainants, be, and the same is, reserved to be decided by the supreme court of the State, and the clerk is ordered to certify the same to said court according to the statute in such case made and provided.

I, C. N. Osborn, clerk of the district court aforesaid, do hereby certify that the foregoing order is truly taken and copied from the journal of said court.

In testimony whereof, I hereunto set my hand and affix the seal of said court at Wilmington this 23d day of August, A. D. 1856.

[SEAL.]

C. N. OSBORN, *Clerk.*

Entry.

And now at this day, to wit, the 21st day of January, A. D. 1861, it being of the December term of the court, aforesaid, for the year 1860, on motion of the complainants, this cause is continued to the next April term of this court, with leave to each of the parties to amend pleadings, and the parties agree that any depositions or other documentary evidence on file in the ejectment case referred to in the pleadings which would be competent to be

used as evidence on the hearing, if the same had been taken and filed in this cause, may be used by either party on the hearing herein, without objection on account of not being between the same parties, or because not taken in this cause.

And afterwards, to wit, on the 23d day of March, A. D. 1861, there was filed in the office of the clerk of the court aforesaid the amended answer of defendants, which amended answer is in the words and figures following, to wit:

54 *Amended answer.*

The joint amended answer of William Boyce, John R. Dunlap, and Emily, his wife, Levi Pruett and Peggy, his wife, Isacher Fisher, and Virginia, his wife, George Armstrong, and Elizabeth, his wife, Benjamin McKinney, William Boyce, jr., John Boyce, jr., Anna Kenneth, Jane Boyce, and Smith Boyce, to the bill and amended bill of complaint of John Hadley and Wm. Pyle, for themselves and on behalf of others.

These respondents, none of whom are citizens of the State of Ohio, claiming the benefit of a demurrer to so much of said bill and amended bill as sets up and claims the statute of limitations therein set up and claimed, answering said bill and amended bill, says. That their ancestor, William Boyce, was the owner of the said surveys named in the said bill and amended bill, and that he died and made his will, as therein stated. They also admit that said will was admitted to probate, and that the executor and executrix named were duly qualified; but they deny that the other nominees ever renounced the executorship. Respondents also admit the marriage of said Elizabeth Boyce end Gerard McKinney. They deny that said McKinney, by said marriage, acquired any power over the estate devised to said respondents.

Respondents do not know, but from information believe, that said McKinney did come to Ohio, about the time named, and caused the said surveys to be subdivided. And they suppose he did undertake to sell their lands, without any right or authority whatever, and they suppose that he did undertake to sell the quantities named in the bill and amended bill to William Hadley, and probably for the sum named. They suppose also that
55 sales were made to Aaron Oxley, Richard Cast, and James Birdsall.

Upon this subject the respondents have no knowledge whatever, nor can they state the sums paid by each, for of the whole transaction, when it took place, they were entirely ignorant, not only because they were living remote from the land in another State, but because they were then infants, and some of respondents were not born. Having no knowledge of the transaction, they can neither admit nor deny, but as there can be no motive to misrepresent upon that subject, respondents do not call for proof upon said subjects of sale.

Respondents do not admit that said Gerard McKinney ever acted for Elizabeth Boyce in any of said sales, or in receiving any part of the purchase money, nor do they admit that said money ever came to the hand of Elizabeth McKinney, or was accounted for as assets, to the knowledge of said respondents.

Respondents suppose that the date of settlement by said executor and executrix is truly stated, and they believe account shows that they charged themselves with said sales of land.

Respondent William Boyce admits for himself that about the time he became of age he received some money, but how much he cannot now recollect, which was said to have come from the sale of land in Ohio. He knew nothing of the circumstances of the sale nor to whom the land was sold; he knew not whether authority had been obtained in Ohio, or by what authority the

land had been sold, nor was he cognizant of the settlement alleged
56 to have been made in Fayette county, Kentucky. What money he received was given to him like other personal property.

Respondent states that he did not then, nor has he ever since, by any act or word, approved, confirmed, or ratified any sales made by Gerard McKinney. He was never asked to do any such thing; nor did he ever contemplate any affirmance or recognition of said sales.

Respondents, Dunlap and wife, admit that after their marriage there was paid to said Dunlap nominally the sum of $1,237 36 on her father's estate. Said Dunlap states that said sum was paid to him in bonds on insolvent persons; some of which, after great trouble, he collected in trade, and some in notes on the Bank of the Commonwealth of Kentucky, worth about fifty cents on the dollar.

Respondents had no knowledge of the authority on which said sales were made, or any knowledge of the settlement made by the executor or executrix of said estate. Respondent Emily pleads and sets up also that when her husband received the sum of $1,237 36 she was an infant under 21 years of age, and a married woman; that they have never done any act or deed to affirm said sales. How much, if any, of the $1,237 36 was the proceeds of the sale of lands in Ohio they do not know.

Respondents state that in regard to the papers mentioned in said bill and emended bill, that a negro boy left papers, said to be the papers of Gerard McKinney, at their house; they were put in a trunk and locked up; they have never been opened or examined by either of them. Respondents
57 state that they do not know what they contain, but any one interested is at full liberty to examine them.

Respondents Pruett and wife admit that said Pruett received nominally about $1,200 in property, which was about $300 more than it was worth, as part of her father's estate. They were not privy to, nor had they any knowledge of, said settlement; nor do they know how much, if any, of the $1,200 resulted from the sale of Ohio lands. Indeed, neither Pruett nor wife knew of such sales. They have never in any manner sanctioned, ratified, approved, or confirmed said sales.

Said respondent, Peggy Pruett, also sets up, by way of plea, that when said property was received by her husband she was under the disability of both infancy and coverture.

Respondents think it probable that the husband of Caroline Shrieve received money as her portion of said estate; how much they do not know; but probably the same amount received by said Dunlap and Pruett. Said Caroline was also under the disability of infancy and coverture at the said time. Respondents cannot state anything with respect to Daniel Boyce, dec'd. Respondents state, in answer to said bill and amended bill, that they had no knowledge of the circumstances of said sale. They knew simply as children that land in Ohio had been sold; by whom sold, and by what authority, were matters about which they were in entire ignorance; nor did they ever become possessed of the knowledge of their rights until a short time before the said action of ejectment was brought, when,
58 learning that their property had been illegally and unjustly sold, they prosecuted their action of ejectment in the circuit court of the United States for Ohio, and recovered, because there was no authority in the will of their deceased father to sell said property. And the respondents claim that said recovery in ejectment is a complete and conclusive bar, both in law and equity, to all claims of the complainants, or any of them, to the real estate in the complainants' original bill mentioned; and these respondents set up and claim the record of said judgment, a transcript of which will be exhibited in this cause, as a bar to the complainants' original bill and amended bill, except as to all questions of equitable adjustment

as to the rents and profits of the said real estate, and the improvements thereon, and the question of the restitution of the purchase money; and these respondents insist, that as to the improvements, and taxes, and purchase money they are not equitably liable to the complainants, because the rents and profits of said real estate, since the complainants have had possession, more than discharge and pay off the same; and these respondents claim that they are entitled to a decree in their favor on account of these rents and profits if the court enters at all into these matters of account between the parties; and as to improvements, they claim and insist that they are liable only to ameliorations, and are entitled to rents and profits on the land as improved.

Respondents state that said Gerard McKinney had been insolvent many years before his death, and in these circumstances they received from him what they could get as their share of the estate of their father.
59 What they did receive was not received as a confirmation of these sales, for they did not know anything on the subject of the illegality of said proceedings, and they claim and insist that they are not bound to return or account for the same.

Respondents admit that it is their purpose to issue execution on their judgments in ejectment to obtain possession of said lands. Respondents suppose it to be true that lasting and valuable improvements have been made upon said lands, the value thereof these respondents do not know. Said complainants, having occupied said premises, are responsible for rents and profits as above claimed.

And respondents, finally answering, state that they have no knowledge of any matters stated in said bill or amended bill material for them to answer which they have not answered; they therefore neither admit nor deny any such statements, and having fully answered they pray to be hence dismissed with their reasonable costs.

ROBERTSON, WARD & PROBASCO,
Sol's for respondents, heirs, and devisees of Wm. Boyce, dec'd.

STATE OF KENTUCKY, *Fayette county, ss:*

Before me, C. D. Carr, presiding judge Fayette county court, comes John R. Dunlap, one of the respondents in the above amended answer, and being sworn says, that the facts stated in the above amended answer are true, as he verily believes.

J. R. DUNLAP.

Sworn to and subscribed before me this 22d day of March, 1861.
C. D. CARR, *P. J. F. Co. Ct.*

59½ And on the same day, to wit, the 23d day of March, A. D. 1861, the respondents filed in the clerk's office of the court, aforesaid, the following amendment to the foregoing answer; which amendment is in the words and figures following, to wit:

The respondents amend the within and foregoing answer by the following additions thereto: 1st. They exhibit the record and judgment in this action of ejectment mentioned in the original bill. 2d. They plead that the said record and judg't involved all the material points and facts presented by said bill, and therefore conclude this case and bar all the relief sought by the original and amended bills, except as to improvements and restitution of the purchase money; and they insist that, as to improvements, they are equitably liable for the value of amelioration only, and are entitled to rents on the land as improved.

WARD & PROBASCO & ROBERTSON,
Counsel for Respondents.

LEXINGTON, KY., 22*d March*, 1861.

I, John R. Dunlap, make oath that the facts stated in the original and amended answers are true, as I verily believe.

J. R. DUNLAP.

Sworn to before me, by J. R. Dunlap, this day.

L. P. YOUNG, *J. P., F. C.*

MARCH 22, 1861.

Decree.

60 And this cause was regularly continued from term to term until the October term of the court aforesaid, for the year A. D. 1862, when, on the 22d day of October, it being of the term and year last aforesaid, this cause came on to be heard upon the pleadings, exhibits, and evidence, and was argued by counsel, on consideration whereof the court are of the opinion, and do find, order, adjudge, and decree, that the complainants and those in whose behalf this suit is prosecuted, and those under whom they claim, derive title to the said three surveys of land Nos. 2227, 2245, and 2246, in the pleadings mentioned, as alleged in the bill of complaint, by purchase and conveyance from John Boyce, executor of the last will and testament of William Boyce, deceased; and before and at the time of the commencement of this suit were and still are in possession of said lands, and prior to the commencement of the action of ejectment in the pleadings mentioned had been in possession thereof, claiming title thereto by virtue of said purchases and conveyances adversely against the devisees of the said testator, William Boyce, deceased, and their heirs and devisees, the defendants herein, and against all other persons whomsoever, during a period of more than twenty-one years, and such further length of time as, under the facts and circumstances of the case, as shown by the pleadings and evidence, and as found by the court, had, by virtue of the statutes of limitations of the State of Ohio, before and at the time of the commencement of said actions of ejectment ripened into a legal title in fee simple; and that notwith-

61 standing the recovery in said actions of ejectment in behalf of the defendants herein, the complainants and those in whose behalf this suit is prosecuted, being so vested with the legal title and possession of said lands, are in equity entitled to be quieted in their said title and possession; and to that end, it is now, by the court here, further adjudged and decreed that the said defendants, and all others claiming, or to claim, said lands or any part thereof, included in said surveys Nos. 2227, 2245, and 2246, by, from, or under said defendants, as devisees under the will of the said William Boyce, deceased, or otherwise howsoever, be, and they are, severally and jointly, hereby perpetually and forever enjoined from sueing out upon the said recoveries in said actions of ejectment writs of possession, and from in any manner proceeding upon said recoveries to inforce the same, except for the payment of the costs of said recovery, and from in any way or manner howsoever asserting or attempting to assert or set up any title to said lands or any part thereof adversely to the said title and possession of the complainants, and those in whose behalf this suit is prosecuted, as aforesaid; and, further, that the complainants recover of the defendants their costs by them about their suit in this behalf expended, taxed at $; and that the defendants pay their costs herein, taxed at $; and if default be made in such payment that execution issue therefor as in cases of judgment at law.

And afterwards, to wit, on the 1st day of May, A. D. 1863, it being

62 of the April term aforesaid, for the year last aforesaid, came the said defendants and filed in court here their motion for an appeal, which motion is in the words and figures following, to wit:

Prayer for appeal.

The defendants come and pray an appeal from the decree of this court to the Supreme Court of the United States, and to fix the amount of the appeal bond.

GEORGE ROBERTSON and DURBIN WARD and
H. B. PROBASCO, *Sol's for Defendants.*

And thereupon, on the same day, to wit, the 1st day of May, A. D. 1863, it being of the term and year last aforesaid, the court ordered the following entry to be made in the premises, which entry is in the words and figures following, to wit:

Allowance of appeal.

The defendants come and pray an appeal from the decree of this court to the Supreme Court of the United States; and the matters in controversy being of more than two thousand dollars in value, the court, on motion of the defendants, grant an appeal in said cause as prayed, and fix the amount of the appeal bond at one thousand dollars.

UNITED STATES OF AMERICA, *Southern District of Ohio:*

I, Joseph H. Geiger, clerk of the circuit court of the United States within and for the seventh circuit and southern district of Ohio, do hereby certify that the foregoing transcript is truly taken and copied from the papers on file in this office, and from the records as they are kept in this office; and that the bond hereto attached is a true copy of the original bond filed in this case.

63 In testimony whereof, I do hereto subscribe my name and affix the seal of the said circuit court this 10th day of July, A. D. 1863, and
[SEAL.] of the independence of the United States of America the 87th.

JOS. H. GEIGER, *Clerk.*

Know all men by these presents that we, G. R. Dunlap and Henry Vallette, are held and firmly bound unto John Hadley and William Pyle in the full and just sum of one thousand dollars, to be paid to the said John Hadley and William Pyle, their certain attorneys, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves jointly and severally by these presents. Sealed with our seals, and dated this 30th day of May, A. D. 1863.

Whereas lately at a circuit court of the United States for the southern district of Ohio, in a suit depending in said court between the said John Hadley and William Pyle, for themselves and others, complainants, and John R. Dunlap and others, defendants, a decree was rendered against said John R. Dunlap and others, and the said John Dunlap and others having obtained an appeal to the Supreme Court of the United States to reverse the decree against them, now the condition of the above obligation is such, that if the said John Dunlap and others shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

G. R. DUNLAP. [SEAL.]
HENRY VALLETTE. [SEAL.]

Sealed and delivered in presence of John McLean, as to Vallette.

Sealed and delivered in the presence of G. Robertson, by Geo. R. Dunlap, whom he knows to be good security.

I approve the within bond.

N. H. SWAYNE,
Associate Just. S. C. U. S.

JULY 2, 1863.

64 The United States of America to John Hadley and William Pyle, for themselves and others, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an appeal in chancery, filed in the clerk's office of the circuit court of the United States within and for the 7th circuit and southern district of Ohio, wherein William Boyce, John R. Dunlap, and Emily, his wife, Levi Pruett, and Peggy, his wife, Isacher Fisher, and Virginia, his wife, George Armstrong, and Elizabeth, his wife, Benjamin McKinney, William Boyce, jr., John Boyce, jr., Anna Kennett, James Boyce, and Smith Boyce, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the decree rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Noah H. Swayne, associate justice of the Supreme [SEAL.] Court of the United States, this 17th day of June, in the year of our Lord one thousand eight hundred and sixty-three.

N. H. SWAYNE.

Attest, JOSEPH H. GEIGER, *Clerk.*

I acknowledge service of the above this 14th of July, 1863.

HENRY STANBERY,
Att'y for def'ts in error.

Appeal allowed and bond approved.

N. H. SWAYNE.

Served the within-named John Hadley and William Pyle, for themselves and others, by Henry Stanberry, their attorney, acknowledging service for them on this writ, this 14th day of July, 1863.

A. C. SANDS,
U. S. Marshal, S. D. O.

Fees: 2 services, $4 00.

65 Pleas begun and held at the court-house in the city of Columbus, on the third Tuesday in the month of October, that being the twenty-first day of that month, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States of America the 76th, before the honorable John McLean, and the honorable Humphrey H. Leavitt, judges of the circuit court of the United States within and for the district of Ohio.

Among other proceedings had were the following, to wit:

The lessee of JOHN R. DUNLAP, and wife, *et al.*,
vs.
RICHARD VANTRESS, *et al.*
} In ejectment.

Be it remembered that heretofore, to wit, on the third day of November, in the year of our Lord one thousand eight hundred and forty-six, came the said John Doe, on the demise of John R. Dunlap and wife, *et al.*, by his attorney, and filed in the clerk's office of said court a certain declaration in an action of ejectment against Richard Roe, with a notice and affidavit of service thereto attached, which said declaration, notice, and affidavit are respectively in the words and figures following, to wit:

United States circuit court, seventh circuit within and for the district of Ohio.—July term, A. D. 1846.

DISTRICT OF OHIO, ss:

John Doe, a citizen and resident of the State of Kentucky, complains of Richard Roe, a citizen and resident of the State of Ohio, for that John R. Dunlap, and Emily Dunlap, his wife, late Emily Boyce, Levi Prewitt, and Margaret Prewitt, his wife, late Margaret Boyce, and William Boyce,
63 Benjamin F. McKinney, Isacher Fisher, and Virginia A. Fisher, his wife, late Virginia A. McKinney, George Armstrong, and Elizabeth P. Armstrong, his wife, late Elizabeth P. McKinney, Jesse G. McKinney, William Boyce, jr., John Boyce, Anna Kennet, late Anna Boyce, Jane S. Boyce, and Smith Boyce, citizens and residents of the State of Kentucky, on the first day of January, in the year of our Lord eighteen hundred and forty-six, at the county of Clinton, State of Ohio, and in the district of Ohio aforesaid, had jointly and severally demised to the said John Doe the following lands and tenements, to wit: All that certain tract of land containing six hundred sixty-six and two-thirds acres, more or less, situate between the Little Miami and Scioto rivers, bounded and described as follows, to wit: Part of a military warrant, No. three thousand six hundred and seventy one, in favor of the said William Boyce, (the whole thereof being for two thousand six hundred sixty-six and two-thirds acres,) on the waters of Todd's creek, a branch of the Little Miami, beginning at two ashes, west corner to Thomas Banks's survey of seven hundred and seventy-seven acres, on the line of Horatio Gates's survey, No. twenty-two hundred and thirty; thence with Gates's line south six degrees, east three hundred and fifty-four poles, crossing a large branch at two hundred and seventy-four poles to two sugar trees and a hickory corner, to said Gates's survey No. twenty-two hundred and thirty and fifteen hundred and fifty-four; thence with the line of fifteen hundred and fifty-four north four degrees, east six hundred and two poles, passing the corner at four hundred poles to two sugar trees and an elm; thence north sixty-five degrees, west seven hundred and four
67 poles, crossing a branch to the beginning, with the appurtenances situate in Clinton county, in the district aforesaid; to have and to hold the same to the said John Doe, a citizen and resident in the State of Kentucky aforesaid, from the first day of January, in the year aforesaid, for and during the full end and term of twenty years thence next ensuing. And also for that John R. Dunlap, and Emily Dunlap, his wife, late Emily Boyce, Levi Prewitt, and Margaret Prewitt, his wife, late Margaret Boyce, and William Boyce, Benjamin F. McKinney, Isacar Fisher, and Virginia A. Fisher, his wife, late Virginia A. McKinney, George Armstrong, and Elizabeth P. Armstrong, his wife, late Elizabeth P. McKinney, Jesse G. McKinney, citizens and residents of the State of Kentucky, on the first day of January, in the year of our Lord eighteen hundred and forty-six, at the county of Clinton, State of Ohio, and in the district aforesaid, had jointly and severally demised to the said John Doe the following lands and tenements, to wit: The equal undivided five-sixth parts of all that certain tract of land containing six hundred sixty-six and two-thirds acres, more or less, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, bounded and described as follows, to wit: Part of a military warrant, No. thirty-six hundred and seventy-one, in favor of the said William Boyce, (the whole thereof being for two thousand six hundred sixty-six and two-thirds acres,) on the waters of Todd's fork, a branch of the Little Miami, beginning at two ashes, west corner to Thomas Banks's survey of seven hundred and seventy-seven acres, on the line of Horatio Gates's survey, No. twenty-two hundred and thirty; thence with Gates's

line south six degrees, east three hundred and seventy-four poles,
68 crossing a large branch at two hundred and seventy-four poles to two sugar trees and a hickory corner, to said Gates's survey, No. twenty-two hundred and thirty and fifteen hundred and fifty-four; thence with the line of fifteen hundred and fifty-four north eighty-four degrees, east six hundred and two poles to two sugar trees and an elm; thence north sixty-five degrees, west seven hundred and four poles, crossing a branch to the beginning, with the appurtenances, situated in Clinton county and district aforesaid; to have and to hold the same to the said John Doe, a citizen and resident of the State of Kentucky aforesaid, from the first day of January, in the year aforesaid, for and during the full end and term of twenty years thence next ensuing. And also for that John R. Dunlap, and Emily Dunlap, his wife, late Emily Boyce, Levi Prewitt, and Margaret Prewitt, his wife, late Margaret Boyce, William Boyce, William Boyce, jr., John Boyce, Anna Kennett, late Anna Boyce, Jane S. Boyce, and Smith Boyce, citizens and residents of the State of Kentucky, on the first day of January, in the year of our Lord eighteen hundred and forty-six, at the county of Clinton, State of Ohio, and in the district of Ohio aforesaid, had jointly and severally demised to the said John Doe the following lands and tenements, to wit: The one equal undivided five-sixth parts of all that certain tract of land containing six hundred sixty-six and two-thirds acres, more or less, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, bounded and described as follows, to wit: Part of a military warrant, No. thirty-six hundred and seventy-one, in favor of the said William Boyce, (the whole thereof being for two thousand six
69 hundred sixty-six and two-thirds acres,) on the waters of Todd's Fork, a branch of the Little Miami, beginning at two ashes, west corner to Thomas Banks's survey of seven hundred and seventy-seven acres, in the line of Horatio Gates's survey, No. twenty-two hundred and thirty; thence with Gates's line south six degrees, east three hundred and fifty-four poles, crossing a large branch at two hundred and seventy-four poles to two sugar trees and a hickory corner, to said Gates's survey, No. twenty-two hundred and thirty and fifteen hundred and fifty-four; thence with the line of fifteen hundred and fifty-four north eighty-four degrees, east six hundred and two poles to two sugar trees and an elm; thence north sixty-five degrees, west seven hundred and four poles, crossing a branch to the beginning, with the appurtenances, situate in Clinton county and district aforesaid; to have and to hold the same to the said John Doe, a citizen and resident of the State of Kentucky aforesaid, from the first day of January, in the year aforesaid, for and during the full end and term of twenty years thence next ensuing. And also for that John R. Dunlap, and Emily Dunlap, his wife, late Emily Boyce, Levi Prewitt, and Margaret Prewit, his wife, late Margaret Boyce, and William Boyce, citizens and residents of the State of Kentucky, on the first day of January, in the year of our Lord eighteen hundred and forty-six, at the county of Clinton, State of Ohio, and in the district aforesaid, had jointly and severally demised to the said John Doe the following lands and tenements, to wit: The equal undivided five-
sixth parts of all that certain tract of land containing six hundred
70 sixty-six and two-thirds acres, more or less, situate between the Little Miami and Scioto rivers, northwest to the river Ohio, bounded and described as follows, to wit: Part of a military warrant, No. thirty-six hundred and seventy-one, in favor of the said William Boyce, (the whole thereof being for two thousand six hundred sixty-six and two-thirds acres,) on the waters of Todd's Fork, a branch of the Little Miami, beginning at two ashes, west corner to Thomas Banks's survey of seven hundred and seventy-seven acres, in the line of Horatio Gates's survey, No. twenty-two

hundred and thirty; thence with Gates's line south six degrees, east three hundred and fifty-four poles, crossing a large branch at two hundred and seventy-four poles to two large sugar trees and a hickory corner, to said Gates's survey, No. twenty-two hundred and thirty and fifteen hundred and fifty-four; thence with the line of fifteen hundred and fifty-four north eighty-four degrees, east six hundred and two poles, passing the corner at four hundred poles to two sugar trees and an elm; thence north sixty-five degrees, west seven hundred and four poles, crossing a branch to the beginning, with the appurtenances, situate in Clinton county and district aforesaid; to have and to hold the same to the said John Doe, a citizen and resident of the State of Kentucky aforesaid, from the first day of January, in the year aforesaid, for and during the full end and term of twenty years thence next ensuing. By virtue of which said several demises the said John Doe entered the said tenements, first, secondly, thirdly, and fourthly above mentioned, with the appurtenances, and was thereof possessed
71 for the several terms aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the first day of February, eighteen hundred and forty-six, with force and arms, entered into the said tenements, with the appurtenances, and ejected the said John Doe therefrom, and other wrongs to the said John Doe, then and there did, to the great damage of the said John Doe, and against the peace and dignity of the United States of America. Wherefore the said John Doe saith that he is injured, and hath sustained damage to the value of five thousand dollars; and therefore he sues, &c.

By GEORGE ROBERTSON,
HENRY BROWN,
WILLIAM S. MICKLE,
Attorneys for plaintiffs.

Notice.

To Perry Dakin, Benjamin Howland, John Hemstead, Eleanor Johns, Sarah Johns, Ezekiel Underwood, Richard Vantress, Abraham Allen, Caleb Davis, Jesse Downard, Stacie Haines, Jabez Hutton, Ezekiel Leonard, John McIntire, and Henry Underwood:

I am informed that you are in possession of, or claim title to, the premises in this declaration mentioned, or to some part thereof, and I being sued in this action as a casual ejector, and having no title to the said premises, do advise you to appear at the next regular term of the circuit court of the United States for the seventh circuit and district of Ohio, and make yourselves defendants in my stead, otherwise judgment will then be entered against me by default, and you will be turned out of possession.

Yours, RICHARD ROE.

Dated October 3, 1846.

Affidavit of service.

I, John E. Woodruff, of the county of Warren and State of Ohio, do make solemn oath that I did, on the ninth day of October, in the year 1846, make personal service on Perry Dakin, Ezekiel Underwood, Stacie Haines,
72 and John McIntire, tenants in possession of the premises in the within declaration mentioned, with a true copy of the within declaration and notice, and at the same time explained to each the object and intent of said declaration and notice; and I do further say that I served Sarah Johns with a true copy of the within declaration and notice by delivering a copy to a person on the premises in this declaration mentioned, and occupied by the said Sarah, none of her family being on said premises, and at the same time I

explained to said person, he being of full age, the object and intent of *of* said declaration and notice; and I do further say upon oath aforesaid that I served Benjamin Howland, John Hemstead, Eleazer Johns, Richard Vantress, Abraham Allen, Caleb Davis, Jesse Downard, Jabez Hutton, Ezekiel Leonard, and Henry Vanderburg, by leaving a true copy of the within declaration and notice with members of their families, respectively, on the premises mentioned in this declaration, and at the same time explained to each one, respectively, the object and intent of said declaration and notice aforesaid.

J. E. WOODRUFF.

STATE OF OHIO, *Warren County, ss:*

Personally appeared before me, Richard Parcell, one of the associate judges of the court of common pleas in and for said county, John E. Woodruff, who signed the foregoing affidavit, and was duly sworn according to law by me, and says that the same is true.

Given under my hand and seal, this 27th day of October, 1846.

RICHARD PARCELL. [SEAL.]

And afterwards, to wit, at the November term of said court, in the year of our Lord eighteen hundred and forty-six, this cause was continued;
73 and afterwards, to wit, at the July term of said court, in the year of our Lord eighteen hundred and forty-seven, this cause was continued; and afterwards, to wit, on the eleventh day of November, being at the November term of said court, in the year last aforesaid, on motion of the tenants in possession, leave is given them to file their consent, rule, and plea; and afterwards, to wit, on the fifteenth day of November, in the year and at the term of said court last mentioned, came the parties, by their attorneys, and filed in said court a certain agreement in the words and figures following, to wit:

It is hereby agreed by the attorneys for the plffs. and def'ts in the above stated cause, that Benjamin F. McKinney, Isacar Fisher, and Virginia A. Fisher, his wife, late Virginia A. McKinney, George Armstrong and Elizabeth P. Armstrong, his wife, late Elizabeth P. McKinney, and Jesse G. McKinney, may be stricken out of the first and second counts in the declaration on file in the above stated case, and that the counsel of either party may move the court to have the same done, without prejudice to said suit to either party; and it is further agreed by said counsel that all depositions that have been heretofore taken, or that may be hereafter taken, upon notice duly served and taken according to the practice and statutes of the State courts in the State of Ohio, may be read in evidence in said cause by either party, reserving all questions as to competency or irrelevancy, &c., notwithstanding any law of the United States, or the rules of practice in the circuit court of the United States to the contrary. And it is further agreed by and between said attorneys that said causes are to be continued until the next term of said court, November 8th, 1847.

"W. S. MICKLE,
"*Att'y for Pl'ff.*
"THO. CORWIN,
"*Att'y for Def'ts.*"

74 And thereupon this cause was continued. And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and forty-eight, this cause was continued. And afterwards, to wit, on the eighteenth day of November, being at the November term of said court, in the year last aforesaid, came the tenants in possession of said premises, by their attorneys, and filed in said court their consent, rule, and plea in the words and figures following, to wit:

United States circuit court for the district of Ohio.

JOHN DOE, *ex dem.* JOHN R. DUNLAP *et al.*,
vs.
RICHARD VANTRESS *et al.*

And the said Richard Vantress, Ezekiel Underwood, Benjamin Howland, Phebe Dakin, Clarke Howland, Eleazor John, Caleb Davis, Henry Vanderberg, Stacy Haines, Abraham Allen, and Jabez Hutton, come and confess lease, entry, and ouster in said declaration mentioned, and admit themselves in possession of the premises in said declaration mentioned, and for plea say that they are not guilty of the trespass and ejectment in the said declararation alleged against them, and of this they put themselves upon the country and the said John Doe doth the like, by T. Corwin and R. B. Harlan, their att'ys.

And thereupon this cause was continued. And afterwards, to wit, at the time appointed by law for holding the July term of said court, in the year of our Lord one thousand eight hundred and forty-nine, the marshal of said district, in conformity with an order to that effect from the honorable John McLean, one of the judges of said circuit court, adjourned said court to the fifteenth day of October, then next ensuing; whereupon, by reason of such adjournment, this cause was continued. And afterwards, to wit, at said adjourned session of said court, held on the fifteenth day of October, in the year last aforesaid, this cause was continued. And
75 afterwards, to wit, at the November term of said court, in the year last aforesaid, this cause was continued. And afterwards, to wit, at the time appointed by law for holding the July term of said court, in the year of our Lord eighteen hundred and fifty, the marshal of said district, in conformity with an order to that effect from the honorable John McLean, one of the judges of said circuit court, adjourned said court to the thirtieth day of September then next ensuing, whereupon, by reason of such adjournment, this cause was continued. And afterwards, to wit, at said adjourned session of said court, held on the thirtieth day of September, in the year last aforesaid, this cause was continued. And afterwards, to wit, at the October term of said court, in the year last aforesaid, this cause was continued. And afterwards, to wit, at the April term of said court, in the year of our Lord one thousand eight hundred and fifty-one, by consent of the parties through their respective counsel, this cause is submitted to the court for decision on the law and the facts as the court would advise a jury to decide it, each party reserving a right to file written arguments and any legal testimony at any time before the first day of July next; and this cause is continued. And now, at this day, to wit, on the twenty-eighth day of October, in the year and at the term of said court first herein mentioned, a jury having been waived in this case, it was submitted to the court, and after argument the court find that John Boyce is barred by the statute of limitations of his original right; and that Daniel Boyce, one of the devisees, is not a party to this suit; and they find that the defendants are guilty of the tresspass and ejectment charged in the declaration, and that they recover, with the exception
of the right of the said John and Daniel, which amounts to two-
76 sevenths of the land in dispute, the possession of the premises, &c.; and they assess the plaintiff's damages at one cent. It is therefore considered that the said plaintiff recover against the said defendant his said terms yet to come in the tenements aforesaid, with the appurtenances, with the exception of the right of the said John and Daniel, which amounts to two-sevenths of the lands in dispute, and his said damages so as aforesaid assessed, together with his costs herein expended, taxed at $25 03. And the

defendants by their counsel give notice that they will claim compensation for their improvements under the occupying claimant law, and they ask the court to suspend the execution until they shall be able to file their bill to investigate matters of equity against the lessors of the plaintiff. And the court orders writs of possession to be suspended until the next term.

UNITED STATES OF AMERICA, *Southern District of Ohio:*

I, Jos. H. Geiger, clerk of the circuit court of the United States for the seventh circuit and southern district of Ohio, do hereby certify that the foregoing is a true transcript of the records of this court in the foregoing case, as the same is kept in this office, and was used in evidence in the case of John Hadley and Wm. Pyle, for themselves and others, vs. Wm. Boyce and others.

In testimony whereof, I do hereto subscribe my name and affix the seal of said court this 26th day of October, A. D. 1863.

[SEAL.]

JOS. H. GEIGER, *Clerk.*

77 JOHN DOE, *ex dem.* JOHN R. DUNLAP *et al.*, vs. JOHN HADLEY *et al.* } Ejectment in circuit of United States, 7th circuit court and district of Ohio.

JOHN DOE, *ex. dem* JOHN R. DUNLAP *et al.*, v. RICHARD VANTRESS *et al.* } Ejectment, in circuit court of the United States, 7th circuit and district of Ohio.

In these cases it is agreed that the tenants in possession of the lands in controversy, or those under whom they claim, took possession of said lands as early as the date of the deeds under which they claim; that they entered under color and claim of title, and have ever since been in the quiet and undisturbed possession of said lands.

And it is further admitted that the deeds purporting to have been executed by John Boyce, executor, and Gerrard McKinney and wife, or by John Boyce, executor, and Gerrard McKinney, for Elizabeth McKinney, executrix of William Boyer, dec'd, cover all the lands in controversy in these cases.

And it is further agreed that the purchase money of the lands in controversy was as much as the sums stated in the deeds mentioned in the last preceeding admission, and had all been paid at the date of said deed, to said McKinney and said John Boyce.

And it is further agreed that all copies of records certified to be such copies by the clerk of the court having the custody of the original records under his seal of office, shall be receivable in evidence in these cases, without further or other authentication; but that each party shall have a right to object to such copies on the ground that they are incompetent or irrelevant testimony.

All depositions taken in this case may be opened at the request of the attorney for either party by the clerk of the circuit court.

Signed this 5th day of July, 1851.

W. S. MICKLE, *Att'y for Pl'ffs.*
R. B. HARLAN, *Att'y for Def't.*

78 The deposition of Lucy Dudley, taken before M. C. Johnson, a justice of Fayette county court of the State of Kentucky, on the twenty-third day of April, in the year 1851, at the house of Dr. Jeptha Dudley, in the city of Lexington and State aforesaid, to be read as evidence in a certain suit depending in the circuit court of the United States for the seventh circuit and Ohio district, holden in Columbus, wherein John Doe, on demise

of John R. Dunlap and wife and others, are plaintiffs, and Richard Roe, otherwise Hadley and others, tenants in possession of land in Clinton county, Ohio, conveyed in the years 1813 and 1816 by Gerard McKinney and others to William Hadley and others, defendants.

The deponent being first carefully examined and cautioned and sworn to testify the whole truth, doth depose and say: That she resides in Fayette county of the State of Kentucky, and more than one hundred miles from Columbus, in the State of Ohio; that she is seventy-six years of age; that she was well acquainted with Elizabeth McKinney; when she married Gerard McKinney she was the widow and executrix of Major William Boyce, dec'd; that she resided about one mile from the residence of Gerard McKinney and wife, and was intimately acquainted with Mrs. Elizabeth McKinney before the year 1813, and continued intimately acquainted with her until the deponent moved to Missouri in the year 1830. Deponent states
79 that if Mrs. Elizabeth McKinney had gone to or visited the State of Ohio in the year 1813 or in the year 1816, she believes that, from her intimate acquaintance with her, she would have known it; that she has no knowledge or remembrance of Elizabeth McKinney ever going to the State of Ohio while she was acquainted with her. And further saith nothing.

her
LUCY × DUDLEY.
mark.

Also the deposition of Jephthah Dudley, taken at the same time and place, and to be read as evidence in the same suit mentioned in the caption to Mrs. Lucy Dudley's deposition.

The deponent being first carefully examined and cautioned and sworn to testify the whole truth, doth depose and say: That he resides in the city of Lexington, Kentucky, and more than one hundred miles from Columbus, in the State of Ohio; that he is nearly forty-nine years of age; that he was born and raised about a mile from the residence of Mrs. Elizabeth McKinney, the widow and executrix of Major William Boyce; that he was intimately acquainted with her, and went to school with her children in the neighborhood. He is satisfied that he was so intimately acquainted with Mrs. Elizabeth McKinney and her family, that she would not have gone to or visited the State of Ohio, in the year 1813 or the year 1816, with-
80 out his knowing it; and he is satisfied that she did not go to Ohio in either of those years. He has no knowledge or remembrance of her ever having gone to or visited the State of Ohio.

JEPHTHAH DUDLEY.

STATE OF KENTUCKY, *Fayette County:*

I, M. C. Johnson, one of the justices of the county court of Fayette county, in the State of Kentucky, duly commissioned, sworn, and acting as such, do certify that, at the request of the plaintiffs, I caused the above-named Lucy Dudley and Jephthah Dudley, deponents in the foregoing depositions, to come before me at the time and place in the caption stated, because said witnesses reside more than one hundred miles from Columbus, Ohio, the place of holding the said court of the United States, as is stated; I did not cause any notice to be given to the adverse party of the time of taking their depositions, because the said adverse party does not, as I believe, reside within one hundred miles of the place of taking the same, nor has said *said* party any agent or attorney, known to me, within that distance; that the said witnesses were by me carefully examined, cautioned, and sworn then and there to testify the whole truth; that the deposition of each witness was wholly reduced to writing by me, in the presence of

81 said witness; and that each of said witnesses then and there, in my presence, severally subscribed their respective depositions; that I am not counsel or attorney for either of the parties, or interested in the event of the cause. All of which is certified to said court as the cause wherefore this deposition is taken, and for the manner it is done.

Given under my hand this 23d day of April, 1851.

M. C. JOHNSON.

82 United States circuit court, seventh circuit within and for the district of Ohio, July term, A. D. 1846.

JOHN DOE, *ex dem.* JOHN R. DUNLAP *et al.*, vs. RICHARD ROE, PEIRE DAKUE *et al.*, tenants in possession. } Ejectments.

I, David Baker, of Warren county, in the State of Ohio, do hereby acknowledge myself security for all costs that may be adjudged against the plaintiff in the above-stated cause.

Witness my hand this 26th day of July, A. D. 1847.

DAVID BAKER.

Attest: W. S. MICKLE.

83 The deposition of James Damaby, of Fayette county, in the State of Kentucky, taken at the law office of George Robertson, in the city of Lexington, Fayette county, Kentucky, on Wednesday, the 8th day of September, A. D. 1847, agreeably to a notice hereto annexed, to be read on behalf of the plaintiff in an action of ejectment now pending in the United States circuit court, seventh circuit, Ohio district, wherein John Doe, *ex dem.* John Dunlap *et al.*, is plaintiff, and William Pyle *et al.* are defendants. This deponent being of lawful age and first duly cautioned, sworn, deposeth and saith:

1st question. Were you, or not, acquainted with William Boyce, senior, deceased, late of Fayette county, Kentucky; and are you, or not, an old resident of the neighborhood in which said William Boyce lived?

Ans. I was well acquainted with William Boyce, senior, late of Fayette county, Ky.; I knew him from the time that he first came to Kentucky until his death. I lived in his immediate neighborhood during his lifetime, within about three miles.

2nd question. When did said William Boyce remove to Kentucky; and is he, or not, dead? If so, when did he die?

My impression is that he came to Ky. in 1807 or 8; I am confident that he died in 1812.

84 3rd. Was, or not, the said William Boyce married in his lifetime? If so, did he, or not, have any issue by his wife?

Ans. He had a wife when he came to Kentucky, and had children by his said wife; he had also been married to another wife before he came to Kentucky, by whom he also had issue, as I was informed.

4th. How do you know that William Boyce, sr., was and had been married, as you have stated above?

Ans. I have heard his second wife say so; also his sons, John and William; and such was the general repute of the neighborhood.

5th. What were the names of the said children of the said William Boyce; and when and where were they born?

Ans. There was John and William by the first wife; Daniel, Emily, Peggy or Margaret, and Caroline, by the second wife.

6th. What was the size and apparent age of said children at the death of their father in 1812?

Ans. John was a man grown; William was 14 or 15 years old; the other children were much younger; the oldest ones might have been 7 or 8 y'rs old, but I am not positive as to that.

7th. Do you know whether, or not, Emily, Peggy or Margaret, and Caroline have ever married? If so, to whom, and when?

Ans. They have all married. Emily married John R. Dunlap, of Fayette county, Ky.; Peggy married Levi Prewitt, then of Fayette county,
85 Ky.; and Caroline married ——— Shreve, whose first name I do not recollect, of Jessamine county, Ky. They all married before they arrived at the age of twenty-one years. Emily has always remained covert. Levi Prewit is still alive, unless he has died within the last day or two, and has never been divorced from his wife. I have a personal acquaintance with John R. Dunlap and Levi Prewitt. ——— Shreve I do not know. I have never heard that Shreve was dead; but I have no personal acquaintance with him, and have not seen him for many years.

8th. Have, or not, any of the said children of William Boyce ever, so far as you know, resided in or ever visited the State of Ohio?

Ans. None of them ever resided there, that I have heard of. I do not know that any of them ever were in the State of Ohio, even transiently. John, in 1815 or '16, went to Philadelphia to buy merchandise; whether he went up the river, or how he went, I do not know.

9th. Do you, or not, know whether William Boyce, sr., aforesaid, was an officer in the revolutionary war?

Ans. I do not know, of my own knowledge; he was generally reported to have been. He was called in this county Major Boyce; how he derived the title I do not know.

86 1st question by defendant's attorney. Has not Daniel Boyce deceased? If so, did he leave heirs or wife; if a wife, is she still living, and where living?

Answer. Daniel Boyce is dead. He left a wife, who has since married John Allen, of Fayette county, Ky. He left no heirs. Mrs. Allen is still living, or was a short time since.

2d question by same. Had not William Boyce children by his second wife, the late Mrs. McKinney, at the time he emigrated to Kentucky? If so, how many, and what were their names?

Answer. Yes. Their names were Daniel, Emily, Margaret, and Caroline. I think they were all born before he came to Kentucky, but am not certain such was the fact.

3d question by same. What was the probable age of John Boyce at the time his father came to Kentucky?

Ans. I think he was twenty or twenty-one at that time.

4th. How much younger was William than John, in your opinion?

Answer. I think 8 or 10 years.

5th question by same Has not John Boyce deceased? If so,
87 state the time of his death as nearly as you can.

Answer. I have been informed that he is dead; he died in Missouri a year or two since, as I have been informed.

6th question by same. Did he leave heirs?

Answer. Yes.

7th question by same. Had, or not, McKinney, the late Mrs. Boyce, since deceased, leaving heirs other than those named? If so, state their names if you know them.

Answer. I am informed that Mrs. McKinney is dead. I think she died with the cholera in 1833; she left several children.

Re-examined by plaintiffs' counsel.

Question. Did, or not, John Boyce, dec'd, leave children at the time of his death? If so, state their names and ages, and whether or not they are residents of the State of Kentucky.

He left children, born in Kentucky; he had three, that I knew, when he left Kentucky. He left Kentucky in October, 1824, and had children—Martha, Jane, and William—the oldest about 8 or 10 y'rs old; the ages of the others I do not know; they were about 4 or 2 y'rs old, in the order named, as I suppose; the oldest of said children, Martha, I have learned, is since dead. I do not know whether Jane ever married, nor whether they have ever been in Ohio.

88 Question by defendants. Do you know whether Mr. Dunlap and wife, Mr. Prewitt and wife, Mr. Shreve and wife, Daniel Boyce, and William Boyce, or either of them, ever received from the executor of William Boyce, deceased, or from their guardians, the money which came into the hands of such executors or guardians, belonging to them, said heirs, or either of them?

Answer. I do not. And further saith not.

JAMES DAMABY.

STATE OF KENTUCKY, *Fayette County, ss:*

As a justice of the peace in Fayette county, Ky., I certify that the foregoing depositions of Richard B. Young, John S. Kenny, and James Damaby were taken, subscribed before me, at the office of Geo. Robertson in the city of Lexington, on the 8th day of Sept., 1847.

B. F. GRAVES, *J. P. F. C.*

89 The deposition of Richard B. Young, taken at the same time and place, for the same purpose. Deponent being of lawful age, and first duly sworn, deposes and says:

1 question. Were you or not acquainted with William Shreve, of Jessamine county, Ky.? If so state whether or not he was married to Caroline Boyce, and whether or not the said William and Caroline have since died without issue.

Answer. William Shreve did marry Caroline Boyce, one of the children of William Boyce, sr., dec'd, and she and her said husband died about the year 1833, without issue.

2nd question. Were you or not acquainted with the children of Wm. Boyce, sr., dec'd? If so state their names and ages, and whether or not they are and have ever remained citizens of the State of Kentucky.

Answer. I was acquainted with Daniel, Emily, and Caroline Boyce. Daniel Boyce died in the year 1840 or '41, and Emily Boyce is and has been since, before she was of age, the wife of John R. Dunlap, of Fayette county, Ky.; the age of Caroline I did not know; I knew nothing of the other children of Wm. Boyce, sr., except Wm. Boyce, jr.; I do not know his age. All of them that I knew have always been residents of Kentucky, and have never been in the State of Ohio, to the best of my knowledge. And further saith not.

RICH. B. YOUNG.

90 Also, the deposition of John S. Kenny, taken at the same time and place, for the same purpose. Deponent being of lawful age, and first duly sworn and examined, deposes and says:

1 question. Were you, or not, acquainted with William Boyce, sr., deceased, of Fayette co., Ky., and with the children and heirs of said William Boyce?

Answer. I was acquainted with John Boyce, William Boyce, Danl. Boyce, Peggy or Margaret Boyce, Caroline Boyce, and Emily Boyce, who were reported to be the children of said William Boyce.

2nd question. Do you know when and where the said Wm. Boyce, sr., died?

Answer. I do not; I never knew him, and only know the fact of his death from what I have been told by his children; they have informed me of his death. I have been told that he died in 1812 or '13, by several of his children; I have heard them speak of it many years ago.

Question. Did, or not, all of said children that you have named survive their father?

Answer. William Boyce, Emily Dunlap, and Peggy Prewitt are all that are alive now that I know; they all survived their father.

Question. Do you know whether or not the females are all married? If so, state when they were so married, and whether they have continued so.

91 Answer. Yes, the females are all married that are living. Emily was married in 1822 to Col. John R. Dunlap; Peggy was married to Levi Prewitt in 1827 or '8 at the age, I suppose, of about 17; Caroline was married to Mr. Shreve, at what age I do not know. From information that I have derived from relatives and members of the family, I have learned that said Shreve and wife are both dead, whether with or without issue, I no not know.

Question. Do you know from your own knowledge, or from the information of members of the family of said William Boyce, sr., whether or not all of said children were and are residents of the State of Kentucky?

Answer. John Boyce was a resident of the State of Missouri at the time of his death; the balance of said children were, and ever have been, residents of the State of Kentucky. Those that are alive are now residents of said State. Daniel Boyce at one time removed to Missouri, but subsequently returned to Ky. William Boyce is at this time a resident of the State of Missouri, I presume.

Question. Have you, or not, been intimately acquainted with the said children, and have you ever known any of them to reside in or transiently visit the State of Ohio?

92 Ans. I have known the aforesaid children of William Boyce, sr., well, and I have never known any of them to reside in or visit the State of Ohio.

Question. Do you know when and where John Boyce, son to William Boyce, sr., of Fayette county, Ky., died, and whether or not he left any issue at the time of his death?

Ans. I have been informed by members of the family of William Boyce, sr., that the said John is dead; when he died I do not know. He had four children, John, William, Martha, and Jane, that I knew; whether they are still alive I do not know.

Question. What are the ages of said children, respectively?

Ans. I do not know.

Question. What were their ages and sizes when said Boyce left Ky. for Mo.?

Ans. I think John Boyce removed to Mo. in Oct., 1824; the boys then appeared to be between 4 and 6 years old. William was the oldest; I think Martha and Jane were somewhat older than the boys.

Question. Do you know whether all of said children of John Boyce are yet alive?

Ans. I have learned from the information of her relatives that Martha is dead; when she died I do not know. Whether the other children are yet alive I do not know.

Question. Is, or is not, Daniel Boyce dead without issue?

93 Ans. He died in 1825, without children. His wife is surviving, or, I have not heard of her death.

Question by defendants attorney. Did not Mrs. Mc Kinney, late Mrs. Boyce, bear issue by Capt. McKinney? If so, state their names if you can do so.

Answer. Yes. She left four children by Capt. McKinney, all of whom were living the last time I heard from them.

2nd by same. Do you know whether any of the heirs of William Boyce, deceased, received from the executors of their father, or from their guardian, their respective portions of the estate of their father?

Answer. I do not. And further saith not.

JOHN KENNY.

94 United States circuit court, 7th circuit, district of Ohio.

JOHN DOE, *ex dem.* JOHN R. DUNLAP *et al.*, *v.* JOHN HADLEY *et al.* } Ejectment.

JOHN DOE *ex. dem.* JOHN R. DUNLAP *et al.*, *v.* RICHARD VANTRESS *et al.* } In circuit court, &c. Ejectment.

In these cases depositions will be taken on the part of the defendants at the auditor's office in the town of Wilmington, Clinton county, Ohio, on the 5th, 6th, and 7th days of July, 1851, between the hours of 8 o'clock a. m. and 6 o'clock p. m.

R. B. HARLAN, *Att'y for Def'ts.*

I acknowledge legal service of the above notice, July 1st, 1851.

W. S. MICKLE, *Att'y for Pl'ffs.*

Witnesses—

NATHAN LINTON.
WILLIAM HARVEY.
JOHN HAZARD.
JAMES DAKIN.
WILLIAM OSBORN.
SAMUEL ANDREW.

95 United States circuit court, of the 7th circuit, district of Ohio.

JOHN DOE, *ex dem.* JOHN R. DUNLAP *et al.*, *vs.* JOHN HADLEY *et al.* } Ejectment.

JOHN DOE, *ex dem.* JOHN R. DUNLAP *et al.*, *vs.* RICHARD VANTRESS *et al.* } In circuit court, &c. Ejectment.

Depositions of witnesses taken in said suits above named pending in said court, on the part of the defendants, in pursuance of the notice hereto attached, and at the time and place therein named. Parties by their attorneys present. William Harvey, of the county of Clinton, of lawful age, being first duly affirmed by me as hereafter certified, deposes and says, in answer to questions by def'ts' counsel:

In the fall of 1813, I believe, as near as I recollect the time, I went with John Hadley, sr., and agent for William Hadley, to purchase land in William Boyce's survey, lying at Clarksville, in Clinton county; he purchased land of Gerard McKinney, in said survey; McKinney was the man that married

the widow Boyce. This was the 1st purchase made by Hadley in that survey. William Hadley moved on that land, I think, in 1815, in the fall; can't recollect the month. Possession was given to John Hadley for Wm.
96 Hadley at the time of the purchase. Since William Hadley took possession, he and those claiming under him have ever had undisturbed possession of said land. At the time of William Hadley's purchase, Richard Cast was in possession and living near this purchase on a part of the Boyce land; Cast at that time claimed the land as his own; Hadley purchased at $3 pr. acre, and the money was paid down.

WILLIAM HARVEY.

Also Samuel Andrew, of said county, of lawful age, being first duly affirmed by me as hereafter certified, deposes and says, in answer to questions by defendants' counsel:

In the fall of 1813, to the best of my recollection, John Hadley, agent for William Hadley, purchased in the Boyce survey (lying near where Clarksville, in Clinton county, now is) of a man by the name of McKinney, a part of the Boyce land. I think the purchase made at that time by Hadley was about 900 acres lying north of Todd's fork; Hadley took possession of the land at the time of said purchase. The land was purchased at $3 pr. acre and the money was paid down at the time of the purchase. William Hadley, and those claiming under him, have been in possession of said land ever since the purchase. There was a young man out on the land at the time of this first purchase by the name of Boyce; can't recollect his given name; he was with McKinney.

SAMUEL ANDREW.

97 Also William Osborn, of said county, of lawful age, being first duly affirmed by me as hereafter certified, deposed as follows, in answer to questions by defendants' counsel:

I don't know much about the purchase of William Hadley, but Hadley moved here on the land late in the year 1815.

WILLIAM OSBORN.

The following deposition is taken in the case against Richard Vantress and others, to wit: Nathan Linton, of Clinton county, Ohio, of lawful age, being by me first duly affirmed as hereafter certified, deposes and says, in answer to questions by defendants' counsel:

James Birdsall's contract or article of agreement entered into with Nathan Linton, as the attorney in fact of Girard McKinney and John Boyce, for the entire survey, No. 2,246, bears date the 7th day of May, 1814, and James Birdsall and those claiming to be the owners of the land under him have been in possession of said survey ever since.

NATHAN LINTON.

John Hazard, of said county, of lawful age, being first duly affirmed by me as hereafter certified, in answer to questions by defendants' counsel:

James Birdsall, and those claiming under him, have had possession
98 of Wm. Boyce's survey, No. 2,246, since the year 1814. Birdsall claimed to be the owner of said land.

JOHN HAZARD.

I waive the certificate of the clerk of the proper court as to the official character of Justice Truesdell.

W. S. MICKLE, *Att'y for Pl'ffs.*

JULY 5, 1861.

THE STATE OF OHIO, *Clinton County, ss:*

I, Bebee Trusdell, a justice of the peace in and for the township of Union, in said county of Clinton, Ohio, do hereby certify that the above-named William Harvey, Samuel Andrew, William Osborn, Nathan Linton, and John Hazard, were by me first duly affirmed to testify the truth, the whole truth, and nothing but the truth, and that the foregoing depositions by them respectively subscribed was reduced to writing by me, (except that Nathan Linton wrote out his own deposition,) and were taken at the time and place specified in the enclosed notice.

In testimony whereof, I have hereunto set my hand this 7th day of July, 1851.

BEBEE TRUSDELL, *J. Peace.*

Cost of this deposition fully paid to each by R. B. Harlan, attorney for defendants, to wit:

Bebee Truesdell, *J. P.*, deposition, 85; subpoena, 32; swearing witness, 20	1 37
James Henry, *Con.*, serving sub., 60; mileage, $1 45	2 05
Witnesses: Wm. Harvey, 50; Sam'l Andrew, 50; Wm. Osborn, 50; N. Linton, 50; John Hazard, 50	2 50
Am't	5 92

BEBER TRUESDELL, *J. P.*

99 *Daniel Boyce, deceased.*

THE STATE OF OHIO, *Clinton County, ss:*

Be it remembered that at a court of common pleas, began and held at Wilmington, within and for the county of Clinton and State aforesaid, on the eleventh day of August, in the year of our Lord one thousand eight hundred and fifty-one, before John Probasco, jr., president, and Stephen Evans, Isaac Collet, and Thomas D. Austin, his associate judges of the same court of common pleas here, at Wilmington, an authenticated copy of the last will and testament of Daniel Boyce, late of the county of Fayette and State of Kentucky, dec'd, was presented for record, in the words and figures following, to wit:

Will.

I, Daniel Boyce, of the county of Fayette and State of Kentucky, being of sound mind and disposing memory, do make, ordain, and publish this my last will and testament, hereby revoking all former wills and codicils made by me.

First. It is my wish and I hereby direct that my just debts be paid.

Second. I give and bequeath to my loving wife all my estate, both real and personal, during her life, and at her death to be divided between my brothers and sisters then living and the heirs of such as may die, in the following proportion, to wit:

100 To my and her own brothers and sisters, two shares; and to each of our own half brothers and sisters one share, until the entire estate is divided.

Third. I appoint my loving wife executrix of this my last will.

In testimony whereof, I have hereunto set my hand and affixed my seal this 23d day of October, 1835.

DANIEL BOYCE. [SEAL.]

Witness:
WILL'M T. BOYCE.
THOMAS J. ROGERS.
J. R. DUNLAP.

December court, 1835.

FAYETTE COUNTY, *to wit:*

This writing, purporting to be the last will and testament of Dan'l Boyce, dec'd, was produced in court, and proved by the oaths of Wm. T. Boyce and J. R. Dunlap, two of the subscribing witnesses thereto, and ordered to be recorded; which is truly done in my office.

Att.: J. C. RODER, *Clk.*

COMMONWEALTH OF KENTUCKY, *Fayette County, sct.:*

I, James A. Gainstead, clerk of the county court for the county aforesaid, do certify that the above writing, purporting to be the last will and testament of Daniel Boyce, deceased, is truly, accurately, and fully transcribed from the record thereof in my office.

In testimony whereof, I have hereunto set my hand and affixed the
101 [SEAL.] seal of said court this 23d August, 1851.

Att.: JAMES A. GAINSTEAD, *Clerk.*

KENTUCKY, *Fayette County, sct.:*

I, Benjamin F. Graves, presiding judge of the county court for the county aforesaid, do hereby certify that James A. Gainstead, whose name is signed on the preceding page, is the clerk of our said court, duly elected, commissioned, and qualified as such. I further certify that his said signature is genuine, and that his said certificate is in due form of law.

Given under my hand this 23d day of August, 1851.

BENJ. F. GRAVES, *P. J., F. C. C.*

On this day an authenticated copy of the last will and testament of Daniel Boyce, late of the county of Fayette and State of Kentucky, deceased, was exhibited to the said court here for record; and it appearing to the satisfaction of the court that said last will and testament of said deceased was fully proven and admitted to record in the month of December, in the year 1835, agreeably to the laws of the State of Kentucky, the court do, therefore, admit the said authenticated copy of the said last will and testament of the said deceased, together with the certificate thereof, to record in the records of our said court here, agreeably to the provisions of the
102 statute of the State of Ohio in such case made and provided.

THE STATE OF OHIO, *Clinton County, ss:*

I, A. E. Strickle, clerk *pro tem.* of the court of common pleas within and for the county of Clinton aforesaid, do hereby certify that the above and foregoing is a true and correct copy of an authenticated copy of the last will and testament of Daniel Boyce, dec'd, as now remaining on record in the office of the clerk of our said court of common pleas.

In testimony whereof, I hereto set my hand and affix the seal of our said court of common pleas, at Wilmington, this 18th day of October,
[SEAL.] A. D. 1851.

A. E. STRICKLE, *Clerk pro tem.*

Cl'k's fees for copy, $1 40.

103 Statement of Mrs. Emily Dunlap, taken by agreement of parties on the 8th day of September, 1847, at the residence of Col. John R. Dunlap, in Fayette county, Kentucky, to be read in evidence on behalf of the plaintiff on the trial of an action of ejectment now pending in the United States circuit court seventh circuit, Ohio district, wherein John Doe, *ex dem.* John R. Dunlap, is plaintiff and William Pyle *et al.* are defendants:

My father, Major William, dec'd, of Fayette county, Kentucky, died on the 16th Jan., 1812. He had *had*, at the time of his death, the following children: William Boyce, John Boyce, Daniel Boyce, Emily Boyce, Peggy Boyce, Caroline Boyce. William was born on the 5th day of May, 1796. Daniel was born August 9th, 1803. Emily was born December 18th, 1804. Peggy was born January 10th, 1806. Caroline was born Oct. 10th, 1808. I know these facts from reading a record in the family Bible. Emily was married to Col. John R. Dunlap April 30th, 1822, and has ever since continued married. Peggy has been married 21 years the first day of next November to Levi Prewitt, and has ever since continued married. Caroline was married to Wm. Shreve the 1st day of January, 1829, and continued married up to her death, which occurred the 21st of September, 1833. Daniel died the 4th day of November, 1835; neither of them left any children. Dr. William Shreve died a year after his wife. All the
104 rest of said children are yet alive except John, who died five years ago this fall, leaving children—Martha, Jane, William, John, Lucinda, and Smith. Martha died in 1834, leaving one daughter, Anne, who is now 13 or 14 y'rs old. Jane is living, and is 29 or 30 years old. William is about 27 or 28. John is two years younger than William. Lucinda is about two years younger than John; and Smith is about two years younger than Lucinda. Jane is married; how long since she married I do not know. Martha married Luther Kennett in about 1831 or 1832.

In answer to defendants' counsel she states:

My mother was married to Girard McKinney about seven months after my father's death. Benjamin McKinney was born of this marriage July 4, 1813. Virginia Armstrong was born the 17th of May, 1815. Elizabeth was born on the 9th day of April, 1818. Jesse was born Jan'y 16th, 1820. My mother died June 22d, 1833. My father died January 16, 1812. Jesse died the 16th of April last.

EMILY DUNLAP.

It is hereby agreed by the plaintiff and defendants in the case of John Doe, *ex dem.* of John R. Dunlap, *vs.* William Pyle *et al.*, that the foregoing statement of Mrs Emily Dunlap shall be read as evidence upon the trial of said case in the United States circuit court, seventh circuit, Ohio district; and that no objection shall be made to the competency of said state-
105 ment as evidence, either upon the ground of interest or upon the ground of informality in the manner of taking it; but the said statement is to be controverted as any competent and formal testimony is subject to be attacked and disputed. The object of this agreement is to save trouble and time in taking the depositions of Levi Prewitt and Nelson Dudley, pursuant to a notice heretofore given to take depositions Sept. 8, 1847.

R. B. HARLAN,
Att'y for Def't.
J. R. DUNLAP.

106 *Dr. Daniel Boyce (orphan) in account with Gerard McKinney and wife, guardian.*

1812.			
	To cash paid for a school book		$0 25
1813.			
Jan'y 22	" ditto for a hat for Macklin		1 50
30	" ditto Mr. White, for schooling, 1812		4 50
Feb'y 15	" ditto for a quire paper		37½
22	" ditto for a spelling book		25
	" ditto for ink powder		18¾
24	" ditto for pair shoes		1 25
May 10	" 3⅛ yards cotton cloth, at 3 shillings		1 56¼
June 23	" cash paid for Columbian Orator		87½
21	" 1¼ yards mixed cotton cloth, at 4s. 6d		93¾
	" trimmings for pantaloons		17
Oct. 16	" cash paid for pair shoes		1 50
	" two pair socks, at 2s. 3d		75
	" cloth and trimmings for a vest		50
Dec. 31	" board, washing, &c., for 1813		40 00
	" balance carried forward		415 41
1814.			
Jan'y 8	" 1¼ yards janes, at 7s. 6d		1 56¼
	" trimmings for pantaloons		17
	" cash paid for a hat		1 00
14	" ditto paid for schooling, 1813		4 50
19	" ditto for mending shoes		25
26	" ditto for a blanket for Ephraim		3 00
Omitted			
12	" ditto paid exe'rs for your over portion of negroes		16 43
Feb'y 21	" ditto paid for pair of shoes		1 37½
May 1	" 1¼ yards check cotton cloth, at 4s. 6d		93¾
	" trimmings for pantaloons		17
7	" cash paid for an arithmetic		75
107			
May 7	" cash paid for a slate, 4s. 6d; pencils, 4½d		81¼
	" ditto " for a cyphering book		1 25
10	" 2 yards mixed cloth, at 4s. 6d		1 50
	" trimmings for a coat		33
July 5	" cash paid for ¼ clerk's fee		25
	" 3¼ yards th. and cotton cloth, at 3s. 9d		2 03½
23	" cash paid for Walker's Dictionary		1 00
	" ditto for 2 qrs paper, at 2s. 3d		18¾
Sept. 16	" ditto for spelling book		25
22	" ditto for mending shoes		25
Oct. 18	" ditto for a pair of shoes		1 75
Nov. 8	" 2 prs socks, at 2s. 3d		75
	" cash paid for hank silk, 12½; ditto, pencils. 12½.		25
28	" ditto for Macklin's coffin		4 00
	" trimmings for coat and pantaloons		37½
25	" cash paid for a hat		1 00
31	" board, washing, &c., for 1814		40 00
	" services for 1813, on hires, &c		20 00

1815.				
		To balance due	$1, 337	94
		" cash paid Dr. Smith your part of his account	5	00
Jan'y	26	" ditto paid for schooling, 1814	6	45
		" ditto paid R. Dudley, for wood at school		75
		" ditto paid Chambers your portion repairing school-house		50
		" yarn pair gloves		25
Mar.	27	" trimming for summer coat		33
Ap'l	7	" cash paid for pair shoes	1	62½
May	10	" trimmings for two vests		33
108				
June	10	" two yards mixed cotton cloth, at 4s. 6d	1	50
		" trimmings for a coat		33
	22	" cash paid for pair of gallows		37½
		" ditto for spelling-book		25
		" 1¼ yards cotton cloth, at 4s. 6d		93¾
		" trimmings for pantaloons		17
Sept.	15	" cash paid for ½ qr. paper, at 2s. 3d		18¾
Oct.	15	" 1¼ yards twilled janes, at 6s	1	25
		" trimmings for pantaloons		17
		" cash for 2 prs. of socks, at 2s. 3d		75
		" trimmings for a vest		17
Nov.	1	" cash paid for penknife		75
		" ditto for a slate, 4s. 6d.; pencils, 4½d		81¼
Dec.	20	" ditto for a pair of shoes, 10s. 6d	1	75
		" ditto for schooling, 1815	10	00
		" ditto for your part of wood at school		31¼
		" 1½ yards of coarse janes, at 4s. 6d	1	12½
		" trimmings for pantaloons		17
		" 4¼ yards of fulled cloth, at 10s. 6d	7	43
		" trimmings for coat and pantaloons		50
	31	" board, washing, &c., 1815	50	00
		" services for 1814	20	00
		" balance due	1, 644	84
1816.				
Jan'y	15	" cash paid for a grammar		75
		" ditto " " arithmetic		75
		" ditto " " Life of Washington	1	00
		" ditto " " cutting coat, 3s.; hat, 6s	1	50
		" ditto " " 14 buttons, 2s. 7½d.; th'd, 1s. 6d.; lining, 1s. 6d		93¾
109				
Jan'y	15	" leather, and mending shoes		37½
		" cash paid for pass and Key to Murray's Gr	1	25
May	29	" ditto " your part of $2, for wood at school, 1815		40
Ap'l	27	" ditto paid for 1 qr. paper, 37½; pencils, 6¼		43¾
		" ditto " for one pair of shoes	1	75
June		" cotton casemere for coat, and trimmings	2	25
		" cash for cutting coat		50
		" 2 yards shirting cotton, 3s. 9d	1	25
		" 3 yards cotton cloth, 2s. 6d	1	25

		To trimmings for 2 pairs of pantaloons	$0 33
Aug't	10	" cash paid for saddle, $15; bridle, $1 50	16 50
Sept.	4	" ditto for ½ qr. paper, 18¾; small book, 25; ditto, spelling-book, 25	68¾
		" ditto paid for a hat	3 50
	13	" ditto " long qt. dancing school	6 00
		" paid Chiles, for board some time	2 50
		" pencils, 4½d.; quills, 4½d	12½
Nov.	15	" 1½ yards twilled linsey, at 6s	1 50
		" trimmings for pantaloons	17
Dec.	20	" cash paid for schooling, 1816	11 00
		" ditto for pair shoes, 13s. 6d.; socks, 3s	2 75
		" 4 yards of cotton cloth, 3s	2 00
	25	" one blanket for Peg	2 75
	31	" board, washing, &c., 1816	50 00
		" services for 1815	20 00
		" balance due	2, 114 47
		" cash paid for Sequel to E. Reader	87½
110			
1817.			
Jan'y	15	" cash paid for pencils, 9d ; ink pot, 9d	25
	16	" ditto in Doct. Smith's account	1 87½
		" ½ soleing shoes and leather	37½
		" cloth and flannel for vest, $1; trimming for same 1s.	1 50
		" one quire paper, 1s. 6d.; quills 9d	37½
March		" paid pair gallows, 1s. 6d.; 1 qr. paper, 1s. 6d	50
April	3	" cash paid for shoes	2 00
May	21	" ditto ½ yard vesting, at 7s. 6d	62½
		" ditto 1 pc. nankeen, 13s. 6d; silk and thread, 1s. 6d.	2 50
		" buttons for 2 prs. pantaloons and vest	25
		" lining and pockets for same	50
June	14	" paid for 3 yds cotton cassimeres, 3s. 9d	1 87½
		" 1½ yds brown Holland, at 2s. 3d.; 2 silks, 1s.; buttons, 9d.; thread, 9d	98¼
		" paid for making coat	2 00
July	17	" 1 qr. paper, 1s. 6d.; pencils 9d	37½
Oct.	18	" cash paid for shoes, $2; book, 75c	2 75
Dec.	10	" ditto for boot, shoes, 15s.; pencils, 9d	2 62½
		" 4½ y'ds mixed janes, at 7s. 6d.; 1¼ blue do., 7s. 6d.	7 18¾
		" 1 yd flannel lining coat, 3s. 9d.; 2 yds cotton and lining cloth, at 3s	1 62½
		" buttons for coat and 2 pair pantaloons	1 00
		" paid for cutting coat	1 50
	16	" vest pattern, 3s.; buttons and thread, 1s. 6d.; silk, 1s. 6d	1 00
		" 4 yards shirting cotton, (omitted Oct.,) at 3s. 3d.	2 17
Dec.	31	" cash paid for schooling, $14 06¼; wood, 31¼	14 37½
		" ditto pocket h'k'f, 9d.; mending shoes, 3s. 9d	75
111			
	31	" board, washing, &c, 1817	50 00
		" services for 1816	20 00
		" balance	2, 286 46¼
1818.			
April	18	" cash paid for pair shoes	2 00
May		" ditto for geography and atlas, 9s.; scales, 4s. 6d.	2 25

		To ditto arithmetic, 3s. 9d.; pencils, 4½d.; ½ quire paper, 18¾	$0	87½
	23	" ditto one and a half yds blue cloth, 19s. 6d	4	87½
		" ditto 2¼ yards gray cord, at 7s. 6d	2	81¼
		" 1⅓ dozen buttons, at 2s. 3d.; 6 silk, 2d.; twist, 6d.	1	17
		" 1 yard shirting, 2s. 6d.; 1½ yds of Holland, at 2s. 3d		98
		" buttons, 9d.; thread, 9d.; padding, 1s. 6d		50
June	9	" paid Owings, making coat and pantaloons	6	00
		" paid Lowery and Clark for making hat	3	50
July	3	" paid for pair shoes, 16s. 6d.; cash, 7s. 6d	3	00
		" ditto one pc. blue nankeen, 15s	2	50
		" ditto one yard muslin		25
Aug.	6	" ditto Aldridge, qr. schooling	6	00
Sept.	19	" ditto ½ qr. paper, 18¾; pair shoes, 13s. 6d	2	43¾
Nov.	4	" ditto Aldridge, qr. schooling	6	00
	6	" ditto mending shoes twice	1	25
Dec.	16	" 2 yds cassinett, at 9s.; vest, 7s. 6d	4	25
		" ditto 5 yards muslin, at 3s.; one h'd'k'f, 7s. 6d	3	75
		" ditto buttons for pantaloons and vest, 2s. 6d.; for shirt, 3d.; thread for all, 2s.; silk, 6d; do. cravat, 4s. 6d	1	62½
	23	" ditto paid for pair shoes	3	00
	31	" ditto Aldridge, schooling	3	76
		" board, washing, &c., 1818	80	00
112				
Dec.	31	" services for 1817	20	00
		" balance due	2,457	93½
1819.				
Feb.	11	" cash paid for History of Rome	1	00
		" ditto for a bridle	2	50
April	11	" ditto mending shoes, 4s. 6d.; cash, 9d		87½
		" ditto Aldridge and Loge, qr. schooling	6	00
May	19	" ditto cyphering book, 37½; scale, $1 25	1	62½
		" ditto case instruments, $7 50; pocket knife, 50	8	00
		" ditto qr. paper, 37½; Euclide, $1 50	1	87½
		" ditto pair shoes	2	00
June	4	" ditto 2½ yds cloth, 30s.; 7 sticks twist, at 3½d	13	00
		" ditto 2½ yds Holland, at 2s.6d,; 1½ doz. but's, 2s.		92
		" ditto ½ pearl buttons, at 1s. 10d.; th'd, 9d		26
	12	" ditto paid for making coat and pantaloons	5	00
		" ditto hat, (omitted 6th)	4	50
		" ditto for Gibson's Surveying, 18s ; Mellishe's map, 10s. 6d	4	75
Aug.	2	" ditto 4½ yds Holland, 2s.6d.; th'd,9d.; buttons, 9d.	2	12½
	10	" ditto for pair of fine shoes	3	50
Sept.	21	" ditto 5 yards I. linen, at 3s. 9d.; thread, 9d	3	25
Oct.	9	" ditto for a trunk, 39s.; cash, mending shoes, 9d.	6	62½
	18	" ditto 6½ yards pressed janes, at 6s	6	50
		" cutting coat, 3s. 9d.; pd. for making do., 9s	2	12½
		" 2 dozen buttons, 9d.; th'd, 9d.; lining, &c., 3s		87½
Nov.	15	" cash, 25c.; ditto pr. shoes, 10s. 6d,	2	00
		" ditto 2 h'd'k'fs, 2s. 3d.; ½ qr. paper, 18¾; girt, 3s.	1	43¾
Dec.	21	" ditto paid Drake f. settout coat, &c	21	50
	31	" board, washing, &c., for 1819, 9 mo's, at $80	60	00

1820.			
Jan. 22	To cash paid for blanket for Peg		$2 50
113			
Jan'y 22	" cash paid steel dust for same, 1s. 6d.; cash, 3s		75
	" services for 1818		20 00
	" services " 1819		20 00
	" balance due 15th Feb'y, 1820		2,539 09
			2,746 12½

Contra.

1813.			
Jan'y 25	By cash received of the ex. and ex'r for your part of $1,578 44, rec'd of Smith, Harrison & McKinney, for sale of Kentucky land	$225 49½	
1813.			
Sept. 21	" cash rec'd of same, your part of $70, for rent of Ohio land	10 00	
Nov. 6	" ditto rec'd of same, your part of $27 50, rent of Ohio land	3 92 6-7	
17	" cash rec'd of same, your part of $1,508 25, rec'd of Hadley and Oxley, for sale of Ohio land, 1st payment	215 46 6-7	
	" interest on $225 49, from 25 Jan'y, 1813, till 1st Jan'y, 1814	13 65	
	" interest on $215 46, from 17th Nov., 1813, till 1st Jan'y, 1814	1 57	
1814.			
Jan'y	" hire of Macklin, for 1813	75 00	
	" ditto Peg, " 1813	5 00	
	" ditto Ephraim, " 1813	56 00	
10	" ditto rec'd of ex'x and ex'r, for your part of $3,151 99¾, rec'd of Smith, Harrison & McKinney, their last payment for Kentucky land	450 28¾	
12	" ditto rec'd of same, your part of $500, rec'd of Cass, for Ohio land, first payment	71 42 6-7	
	" ditto rec'd of same, your part of $64, rec'd for Ohio rents	9 14 2-7	
Sept. 1	" ditto re'd of same, your part of $1,916 82, and 40 int., makes $1,936 82, received of Hadley, in full for Ohio land sold him	279 54 4-7	
114			
Nov. 4	" ditto rec'd of same, your part of $50 10, rec'd for Ohio rent	7 15 3-7	
15	" ditto rec'd of same, your part of $150, rec'd of Cass, in part of land	21 42	
Dec. 31	" interest on $435 47½, 1 year	26 12½	
	" interest on $530 85, from 11th Jan'y	31 56	
	" interest on $279 54, " 1st Sept	5 59	
	" interest on balance	21	

1815.			
Jan'y 1	By hire of Macklin from 3rd Jan'y, 1814, till the end of the year, at $83; he died 27 May, 1814.	$83 00	
	" hire Peg, 1814	10 00	
	" hire Ephraim to Satterwhite, 1814	83 00	
May 9	" cash rec'd of the ex'x and ex'r, from your part of $194 50, received of General Taylor, for a land warrant of 389 acres	27 78	4-7
July 8	" cash of same, your part of $900, received of J. Burdsall, for Ohio land sold him	128 57	1-7
Dec. 31	" interest on $1,399 75¾, one year	83 98	½
	" interest on $27 78 4-7, from 9 May	1 07	
	" ditto on $128 57 1-7, from 8 January	3 67	
1816.			
Jan'y 1	" hire of Ephraim for 1815	76 12	½
	" ditto Peggy, 1815	15 00	
Mar.	" cash received of ex'x and ex'rs, your part of $2,744 33, rec'd of Oxley, Birdsall, Cast & Hawley, for Ohio land sold them	393 04	3-7
	" ditto rec'd same, your part of $45, received for Ohio rent, 1815	6 42	6-7
Dec. 31	" interest on $1,601 75¼, 1 year	96 40	
115			
Dec. 31	" int. on $398 47½, from 1st April	17 93	½
1817.			
Jan'y	" hire of Ephraim, 1816	60 00	
	" ditto Peggy, 1816	18 00	
Dec. 31	" interest on $1,915 53¼, 1 year	114 93	
1818.			
Jan'y	" hire Ephraim for the year 1817	40 00	
	" ditto Peggy, 1817	28 00	
M'ch 29	" cash rec'd of the ex'x and ex'rs, for your part of $900, rec'd of Headley's last payment Ohio land	128 57	½
Dec. 31	" interest on $2,191 67¾, 1 year	131 50	
	" interest " $128 57½, from 29 Mar.	5 78	½
1819.			
Jan'y	" hire of Ephraim for 1818	85 00	
	" ditto of Peggy " 1818	50 00	
Dec. 31	" interest on $2,395 89¼, yr	143 75	
1820.			
Jan'y 20	" hire of Ephraim, 1819	75 00	
	" ditto Peggy, 1819	47 00	
	" int. on $2,459 54½, from 1st Jan'y until 15 Feb'y, 1820	19 44	½
	Amount carried forward	$2, 746 12	½
	Amount brought forward	$2, 746 12	½
	By balance due 15th Feb'y, 1820	$2, 539 09	

The undersigned, commissioners appointed under an order of the Fayette county court, hereto annexed, for the purpose of settling with Gerard McKinney, guardian of Daniel Boyce, one of the infant heirs of William Boyce, deceased, have examined the accounts and vouchers of the said

116 McKinney, the result of which examination, and a statement of the receipts of the said guardian, on account of the estate of his said ward, is above set forth, together with the expenses of education and support of the said Daniel Boyce, and the allowance made to the guardian for his care and trouble in the management of his guardianship; from all which it appears that on the 15th day of February last, the day on which another guardian was appointed, and to which day the settlement was made, there was due to the said Daniel Boyce, in the hands of the said Gerrard McKinney, the sum of two thousand five hundred and thirty-nine dollars and nine cents; all of which is respectfully submitted.

SEPTEMBER 22d, 1820.

CLIFTON THOMSON.
ASA THOMSON.
J. CABELL BRECKENRIDGE.

STATE OF KENTUCKY, *Fayette County, sct., Oct. Court*, 1820:

This settlement of the accounts of Gerard McKinney and wife, guardian to Daniel Boyce, one of the infant heirs of William Boyce, deceased, was returned to court, examined, approved of, and ordered to be recorded; and the same is thereupon truly recorded in my office.

Att.: J. C. RODES, *C. F. C.*

117 COMMONWEALTH OF KENTUCKY, *Fayette County, sct:*

I, James A. Grimstead, clerk of the county court for the county aforesaid, do certify that the foregoing nine pages, embracing a settlement of the accounts of Gerard McKinney and wife, guardians of Daniel Boyce, are truly and accurately transcribed from the record of the same in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 24 day of Nov'r, 1846.

[SEAL.] Att.: JAMES A. GRIMSTEAD, *C. F. C. C.*

118 *Dr. Caroline Boyce (orphan) in ac. with Gerard McKinney and his wife, guardian.*

1813.			
Jan'y 15	To 2 yds cotton and linen cloth, at 3s	$1	00
Aug. 16	" 2½ yds calico, 3s	1	25
Nov. 3	" cash paid for 1 p'r shoes		75
Dec. 15	" 1¾ y'ds linen, 2s. 3d		65¾
Dec. 31	" board, washing, &c., for 1813	40	00
	" services for hiring out negroes, &c., 1813	20	00
	" support of Pleasant for 1813	9	50
	" paid James Dudley for the support of Rhoda for 1813	10	00
	" balance due	386	94¾
		470	10½

1813.	*Cr.*		
Jan'y 25	By cash rec'd of the ex'x and ex'rs, for your part of $1, 578 44, rec'd of Smith, McKinney & Harrison, for the sale of K'y lands, their 1st payment	$225	49 1-7
Sept. 21	" cash rec'd of the same, your part of $70, for rent of Ohio land	10	00
Nov. 6	" cash rec'd of the same, your part of $27 50, for rent of Ohio land	3	92 6-7

17	By cash rec'd of the same, your part of $1, 508 25, received of Hadley & Oxley, for sale of Ohio land, 1st payment		$215	46 3-7
	" interest on $225 49 1-7 from 25th January, 1813, until 1st Jan'y, 1814		13	65
	" interest on $215 46 3-7 from 17 Nov., 1813, until 1st January, 1814		1	57
			470	10½

Dr. Caroline Boyce (orphan) in ac't with Gerard McKinney and Elizabeth, his wife, guardian.

1814.				
Jan'y	12	To cash paid the ex'x and ex'r for your over portion on negroes	$1	43
119				
Mar.	5	To cash paid for 1 p'r shoes		75
		" ditto for 1 p'r shoe buckles		50
	26	" ditto for ⅜ yard Scotch shirting, at 4s. 6d.		28 1-9
Ap'l	6	" ditto for a spelling book		25
May	1	" ditto for 4⅜ y'ds stripe cotton cloth, at 4s. 6d.	3	28¼
Jan'y	5	" ditto for ¼ $1 clerk's fee bill		25
Sept.	1	" ditto for a spelling book		25
Oct.	15	" ditto paid Mrs. Bowen, 1½ qt's schooling	4	50
	17	" ditto for a pair of shoes	1	12½
	24	" ditto for a shawl		87½
		" ditto for 2½ y'ds ch'k col'd cloth, at 3s	1	25
Nov.	8	" ditto for 3 y'ds flannel, 6s	3	00
Dec.	10	" 1 p'r stockings		50
	31	" board, washing, &c., for this year	50	00
		" services for hiring out negroes, &c	20	00
		" balance due	1, 245	18¼
			1, 333	42¾

1814.		*Cr.*		
Jan'y	1.	By balance bro't forward	$386	94¾
		" cash rec'd of Wilgus, hire of Fanny, 1813	30	00
		" ditto rec'd of same, hire of Peyton for 1813	20	00
	10	" ditto rec'd of the ex'x and ex'r, for your part of $3,151 99¾, rec'd of Smith, Harrison & McKinney, their last payment for K'y land	450	28 2-7
	12	" ditto rec'd of the same, your part of $500, rec'd of Cass for Ohio lands	71	42 6-7
		" ditto rec'd of the same your part of $64, rec'd for rent of Ohio land	9	14 2-7
Sept.	1	" ditto received of same your part of $50 10, rec'd for rent of Ohio land	7	15 5-7
		" ditto rec'd of the same, your part of $150 rec'd of Cass, in part, of Ohio land	21	42 6-7
120				
Dec.	31	" int. on $348 70¼, 1 y'r	20	92

By int. on $530 85, from 11th Jan'y last until this day	$30	87½
" int. on $279 54½, from 1st Sept. till this day	5	59
" int. on the balance till this day		21
	1,333	42¾

Dr. Caroline Boyce (orphan) in acc't with Gerard McKinney and Elizabeth, his wife, guardian.

1815.				
Jan'y	1	To support of Rhoda for 1814	$15	00
		" do of Pleasant for 1814	15	00
		" cash paid for a blanket for Fanny	5	00
		" ditto " Dr. Smith your p't his acc't	5	00
	26	" ditto " Mr. Chambers for schooling 1814	1	04
		" ditto your part of repairing school-house, and a book for the school		50
		" 3 yards cotton and th'd cloth, at 3s	1	50
Feb'y	27	" paid for a pair of shoes	1	37½
Mar.	10	" 2¼ ch'k cotton cloth, at 4s. 6d	1	68¼
Ap'l	22	" cash paid for a pair of shoes, 4s. 6d.; for spelling book, 1s. 6d	1	00
Sept.	15	" cash for spelling book, 1s. 6d.; 1 p'r shoes, 6s	1	25
	29	" 3½ y'ds ch'k'd cotton cloth, at 2s. 6d	1	46½
Dec.	20	" cash paid for schooling for 1815	7	50
		" ditto for wood at school, 31¼ cents; 1 p'r shoes, 9s	1	81¼
	31	" board, washing, &c., this year	50	00
		" services for hiring out negroes, &c	20	00
		" balance due	1,418	34½
			1,547	47

1815.		*Cr.*		
Jan'y	1	By balance brought forward	$1,245	18¼
		" cash rec'd of Dr. Smith, for the hire of Fanny for 1814	40	00
		" ditto of Asa Wilgus, for the hire of Peyton for 1814	30	00
121				
May	9	" cash received of the ex'x and ex'r, your part of $194 50, rec'd of Gen'l Taylor, for a land warrant of 389 acres	27	78 4-7
Jan'y	8	" cash rec'd of the same, your part of $900, rec'd of Birdsall in p't of Ohio land	128	57 1-7
Dec.	31	" int. on $1,186 05¾, 1 year	71	16¼
		" int. on $27 78 4-7, from 9th May	1	06
		" int. on $128 57 1-7, from 8th July	3	71
			1,547	47

Dr. *Caroline Boyce (orphan) in acc't with Gerard McKinney and Elizabeth, his wife, guardian.*

1816.			
Jan'y 1st	To keeping Pleasant, 1815	$10	00
	" ditto Rhoda, 1815	15	00
3	" paid for a blanket for Rhoda	1	50
13	" ditto for a spelling book		25
Feb'y 13	" ditto 3⅛ y'ds calico, at 3s. 9d	1	96
Mar. 29	" ditto your part of wood at the school-house, furnished by E. Brease		40
Ap'l 1	" 2½ y'ds check cotton cloth, at 4s. 6d	1	87½
	" 1½ y'ds linen at 3s		75
27	" 1 p'r shoes, 9s	1	50
July	" paid for Introduction to the English Reader, 50; spel. book, 1s. 6d		75
	" 4 y'ds tow linen, for Fanny a bed, 1s. 6d	1	00
Aug't	" 3⅛ y'ds th'd cotton cloth, at 3s	1	56¼
	" calico for bonnet		37½
Sept. 4	" 1 q'r paper, 2s. 3d.; reading book, 1s. 6d		62½
Oct. 15	" 2½ y'ds flannel, at 5s	2	08½
Dec. 20	" cash paid for schooling for 1816	6	37½
	" ditto for 1 p'r shoes, 9s. 9d.; cambric for a cape and to alter a coat, 42c	2	04½
31	" board, washing, &c., for this year	50	00
	" services in hiring out negroes, &c	20	00
	" cash paid for 1 p'r shoes for Pleasant	1	00
	" balance due	1,886	80½
122		2,005	85¾

Cr.

1816.			
Jan'y 9	To balance bro't forward	$1,418	34½
Mar. 23	" cash received of the ex'x and ex'r, your part of $2,744 33, received of Oxley, Birdsall, Cast & Hadley, for Ohio lands	392	04 5-7
	" ditto rec'd of the same, your part of $45, rec'd for rent of Ohio land for 1815	6	42 6-7
Omitted.			
Jan'y 1	" ditto received of Dr. Smith, for the hire of Fanny for 1815	45	00
	" ditto rec'd of A. Wilgus, for the hire of Peyton for 1815	42	50
Dec. 31	" interest on $1,386 79½, 1 year	83	20¾
	" int. on $398 47½, from 23 March to this day	18	33
		2,005	85¾

Dr. *Caroline Boyce (orphan) in acc't with Gerard McKinney and Elizabeth, his wife, guardians.*

1817.			
Jan'y 1	To keeping Rhoda for the year 1816	$10	00
	" cash paid for 1 blanket, each, for Fanny and Pleasants, at $2 75	5	50

	2	To cotton bo't for stockings, 1s. 8d	$0 29
	25	" 4⅛ yards calico, at 3s.; boss cotton, 9s	2 18¾
Mar.	29	" 1 p'r shoes, 7s. 6d.; 1 spelling book, 1s. 6d	1 50
May	21	" 4½ y'ds gingham, at 2s. 6d	1 87½
		" ⅛ y'd muslin, at 6s. 4½d	13½
		" 1½ y'ds shirting muslin, at 3s	75
July	17	" 4½ yards calico, at 2s. 6d; cotton th'd, 1s. 3d	2 08½
		" 1 quire paper	25
Sept.	27	" 1 p'r shoe-boots	2 00
Nov.	8	" cash paid for English Reader	75
Dec.	16	" 3 y'ds sattinett, at 4s. 6d; silk, 1s. 6d	2 50
	31	" board, washing, &c., for this year	50 00
		" schooling, $8 43¾; wood, 31¼	8 75
		" services in hiring out negroes, &c	20 00
		" keeping Rhoda this year	5 00
123			
Dec.	31	" 3 yds cotton shirting, (omitted in Oct.) at 2s. 3d.	1 62½
		" Balance due	1, 983 10¾
			2, 099 30½

Cr.

1817			
Jan'y	1	By balance brought forward	$1, 886 80½
		" cash rec'd of Doct. Smith, for the hire of Rhoda for the year 1816	45 00
		" ditto rec'd of M. B. & Sutton, for the hire of Payton for 1816	45 00
		" ditto of S. Menton, for the hire of Pleasant for 1816	9 25
		" ditto rec'd of Winter, for pr shoes for Pleasant	1 00
Dec.	31	" interest on $1, 870 85¾, 1 yr	112 25
			2, 099 30½

Dr. Caroline Boyce (orphan) in acc't with Gerard McKinney and Elizabeth, his wife, guardians.

1818.			
Jan'y	1	To paid for 1 blanket for Payton	$2 50
		" 1 pr. silk gloves, 3s.; quills, 9d	62½
		" mending shoes, 3s.; 1 doz. cotton, 2s. 6d	92
March	6	" 2¼ yds check, at 4s.; th'd, 9d	1 62½
April	18	" 1 pr. shoes, 12s.; ½ qr. paper, 2s. 3d	2 18¾
May	20	" 4 yds gingham, at 3s. 4½d.; 2¼ do. muslin, 4s. 6d	3 93¾
		" ⅛ muslin, 7s. 6d.; 1 pr. shoes, 7s. 6d	1 40¾
		" 2 yds ribbon, at 2s. 3d.; 1½ do., at 1s. 6d	1 12½
		" 1 bonnet, 21s.; ¼ yd Persian, at 4s. 6d.; th'd, 1s. 6d	3 93¾
June	4	" paid 1 qr. schooling	4 00
Sept.	19	" for arithmetic, 3s. 9d.; grammar, 2s. 3d	1 00
	22	" 4 yds calico, at 3s.; 1 silk, 6d	2 08½
		" 1 shawl, 10s. 6d.; ½ qr. paper, at 2s. 3d	1 93¾
Oct.	20	" paid Aldridge 1 qr. schooling	4 67

Nov.	5	To paid for 1 pr shoes	$2 25
	16	" slate, 2s. 3d.; do. spelling book, 1s. 6d.	62½
Dec.	15	" 3¾ yds sattinett, at 6s.; 1 yd ribbon, 1s.	3 92
124			
	15	To cash for boss cotton, 4½s.; silk, 4½d.	12½
	24	" ditto 1 pr shoes, 13s. 6d.	2 25
	31	" board, washing, &c., for this year	80 00
		" services for hiring out negroes, &c.	20 00
		" balance due	2, 189 68
			2, 330 80¼

1818.		*Cr.*	
Jan.	1	By balance brought forward	$1, 983 10¾
		" cash rec'd of Wm. Smith, for hire of Fanny and child for the year 1817	30 00
		" ditto of M. B. & Sutton, for the hire of Payton for 1817	55 00
		" ditto of John Stark, for the hire of Pleasant for 1817	12 00
May	29	" cash rec'd of the ex'x and ex'r your part of $900, rec'd of Hadley, his last payment for Ohio land	128 57 1-7
Dec.	31	" in't on $1, 938 98½, 1 year	116 33 6-7
		" in't on $128 57 1-7, from 29 May to this day	5 78½
			2, 330 80¼

Dr. Caroline Boyce (orphan) in acc't with Gerard McKinney and Elizabeth, his wife, guardian.

1819.			
Jan'y	1	To paid Aldridge and Logue for schooling, omitted 17 Dec.	$3 00
Feb'y	22	" 1 doz. cotton, 2s. 3d.; 1 pr shoes for Fanny, 15s.	2 87½
	25	" Scot's Lessons, 4s. 6d.	75
Mar.	13	" 1 pr morocco shoes, 7s. 6d.; (24th) 1 qr. paper, 2s. 3d.	1 62½
Ap'l	11	" Aldridge & Logue, 1 qr. schooling	6 00
May	4	" 4 yds gingham 3s.; 1 shawl, 12s.	4 00
		" 2 yds ch'k, at 4s. 6d.; boss cotton, 9d.	1 62½
		" 1 thimble, 4½d.; pencils, 4½d.	12½
		" 3½ yds Irish linen, at 3s. 9d.; th'd, 9d.	2 31¼
July	3	" ¾ yd gingham, 3s.; pastepoard, 4d.	43¾
125			
July	9	" Aldridge & Logue, 1 qr. schooling, 36s.; 1s. 6d. for cyphering book	6 25
	10	" 1 pr morocco shoes, 6s.	1 00
Sept.	27	" Cummins's Geography and Atlas	2 00
Oct.	2	" 1 pr leather shoes, 9s.; R. & Pindell, 6s.	2 50
	19	" 1 thimble, 9d.	12½
Nov.	19	" 2¼ yds flannel, at 6s.	1 35

Dec.	29	To paid	Logue, for schooling	$12 50
Dec.	31	"	⅛ my expense to Paris twice this year	1 00
		"	board, washing, &c., for 1819	80 00
		"	services hiring out negroes, &c	20 00
		"	balance due	2, 324 46¼
				2, 475 70¾

1819.		*Cr.*	
Jan'y	1	By balance brought borward	$2, 189 68½
		" Gerrard McKinney, for the hire of Fanny, 1818	35 00
		" Pyke & Alexander, for the hire of Payton, 1818	72 00
		" " " for the hire of Pleasants, 1818	30 50
		" G. McKinney, for the hire of Rhoda, 1818	15 18¾
Dec.	31	" int. on $2,192 89¼, 1 year	131 37
			2, 475 70¾

Dr. Caroline Boyce (orphan) in acc't with Gerard McKinney and Elizabeth, his wife, guardian.

Jan'y	20	To cash paid	for 1 pr shoes, 13s. 6d	$2 25
	22	"	1 blanket for Fanny, 15s	2 50
	26	"	4 yds cotton cloth, at 2s. 6d.; th'd, 9d	1 79½
Feb'y	18	"	cotton for stockings, 2s. 3d	37½
Mar.	3	"	History of Greece, 7s. 6d	1 25
	14	To paid	Dr. Boswell	3 50
	22	"	2 combs, 1s. 10½d.; ½ soleing shoes, 2s. 3d.	68¾
Ap'l	14	"	4¼ yds ribbon, at 1s. 6d.; line, 4½d	1 12½
		"	⅜ yd saisnett, 6s	37½
		"	for altering bonnet	62½
126				
Ap'l	19	To	5¼ yds gingham, at 1s. 9d	1 54
		"	⅛ yd muslin, 4s. 6d; boss cotton, 9d	37½
		"	1 pr gloves 3s. 9d.; 1 pr leather shoes, 12s	2 62½
		"	1 pr morrocco shoes	2 00
		"	paid for schooling, 1st Apl	6 25
June	8	"	5 yds gingham, at 2s. 6d.; mull muslin, 9d	2 21
		"	3 yds c. muslin, at 6s	3 00
June	31	"	1 hair comb, 9s.; (Aug. 21) ½ y'd cotton, 3s	1 75
Aug.	31	"	grammar and exercises, 10s. 6d	1 75
Sept.	26	"	½ pasteboard, 4½d.; thimble, 4½d	12½
Oct.	1	"	paid James Logue, for schooling, &c	13 37½
	4	"	" for ½ y'd canvass, at 3s. 9d.; 4 h'd'k'fs, silk, at 6d.; 1 pr scissors, 3s	1 14¾
Oct.	9	"	" 4⅛ y'ds check cloth, at 3s. 9d ; 2⅛ y'ds do. c. cloth, at 3s. 9d	4 04
		"	5 y'ds bombazette, at 3s. 9d.; 1¼ do., at 3s.; ½ do. cambric, at 3s	4 00
		"	1⅛ bl'k silk, at 7s. 6d.; 3 y'ds ribbon, at 9d.; hk. silk, 6d	1 87½
		"	1 dictionary, 7s. 6d.; ⅔ ink pot, at 2s. 3d.; 1 pr shoes, 13s. 6d	3 62½
		"	2 blankets for Pleasant and Rhoda, at 15s	5 00

Nov.	27	To ¾ y'd cambric, at 6s.; floss collar, 3s.....	$1 25
Dec.	20	" paid for 1 trunk.....	6 00
	31	" ½ my expenses to Paris twice.....	1 00
		" board, washing, &c., this year.....	80 00
		" services hiring out negroes, &c.....	20 00
		" balance due.....	2, 465 59¼
			2, 644 02¼

1820. *Cr.*

Jan'y	1	By balance bro't forward.....	$2, 324 46¼
		" Jno Chrystall, for the hire of Fanny and child, 1819.....	40 00
		" Sam'l Pyke, for the hire of Payton, 1819.....	90 00
		" " " for the hire of Pleasants, 1819.....	35 00
		" G. McKinney, for the hire of Rhoda, 1819.....	15 00
		" int. on $2, 326 03¼, 1 year.....	139 56
			2, 644 02¼

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1821.

Jan'y	7	To paid Mrs. Grace, for schooling, 36s., and silk, 1s. 6d.....	$6 25
	9	" " Ridgeley & Purdee.....	1 50
Feb'y	10	" " 1 doz. cotton, 2s; 1 p'r l. shoes, 13s. 6d..	2 58½
	17	" " 1 y'd cambric, 4s. 6d.; ball cotton, 9d.; boss, 1s. 6d.....	1 12½
Ap'l	16	" " 1 qr. paper, 2s. 3d ; 2 sidecombs, 67c...	1 04½
		" " 1 tucking comb, 9s.; (27) 2½ y'ds ch'k, at 3s.....	2 75
		" " 3 y'ds cotton cloth, at 2s. 6d; th'd, 9d. ..	1 37½
May	3	" " 1 y'd linen, 3s.; 1 thimble, 9d.....	62½
	14	" " ½ mull muslin, at 12s.; ¼ b. muslin, 12s...	1 50
	25	" " 1 p'r kid gloves, 3s. 9d.; cotton yarn, 2s. 3d.....	1 00
June	2	" " 1 y'd dimity, 3s.; 5½ y'ds gingham, at 4s. 6d.....	4 62½
	30	" " 1 p'r leather shoes, 13s. 6d.; August 15, needles, 9d.....	2 37½
Sept.	1	" " 1 p'r morocco shoes, 12s.....	2 00
	12	" " 6 y'ds cotton cloth, at 2s. 6d; 6 y'ds calico, 3s.....	5 50
Oct.	2	" " 1 doz. 800 cotton yarn.....	33½
Nov.	30	" " 1 shawl, 60s.....	10 00
Dec.	10	" " ½ piece crape, at $26.....	13 00
		" " 2 y'ds ribbon, at 9d.; 3¼ y'ds flannel, at 5s 3d.....	3 09½
	31	" " 1 p'r leather shoes, 15s.....	2 50
		" " 5 y'ds calico, at 4s.....	3 33½
		" " ⅓ my expense to Paris twice.....	1 00
		" board, washing, &c., this year.....	80 00

Dec.	31	To services hiring negroes, &c., this year.....	$20 00
		" balance due.....	2, 611 06½
			2, 778 38½

1821.		*Cr.*	
Jan'y	21	By balance brought forward.....	$2, 465 59¼
		" John Christall, for the hire of Fanny and child, 1820.....	25 00
		" Sam'l Pike, for the hire of Peyton, 1820.....	90 00
		" same, for the hire of Pleasants, 1820.....	35 00
		" G. McKinney, for the hire of Rhoda, 1820	15 00
		" int. on $2,463 27¼, 1 year.....	147 79¼
			2, 778 38½

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1822.			
Jan'y	22	To 3 doz. cotton yarn, at 2s.....	$1 00
Feb'y	6	" paid for one hair comb, 6s.; 2 side do., 4s. 6d..	1 75
	26	" " 2 pocket handkerchiefs, 1s. 6d.....	50
Ap'l	17	" " ¾ y'd muslin, 4s. 6d.; ¾ y'd book do., 13s. 6d.....	2 25
		" " ½ y'd muslin, 7s. 6d.; 3 y'ds jaconet, 6s.	3 62½
		" " 2¾ Irish linen, at 7s. 6d.; 1 p'r cotton hose, 9s.....	4 93¾
		" " 8 y'ds gingham, at 4s. 6d.; 1 p'r m. shoes, 15s.	8 50
		" " p'r beaver gloves, 5s. 3d.....	87½
		" " bonnet and bandbox.....	24 75
	19	" ¾ yards gingham, 4s. 6d.; 1 swan necklace, 56¼c.....	1 12½
		" 1 oz. th'd, 2s. 3d ; 1 bunch tape, 1s. 6d.....	62½
May	31	" paid Brian for a saddle and bridle.....	32 00
June	5	" " 1 p'r leather shoes.....	2 50
Aug.	1	" " ¼ y'd m. muslin, at 12s.; 2 y'ds lace, 18s....	6 50
		" " 1½ y'ds ribbon, at 1s; 1 ditto, 9d.; 1 paper needles, 1s. 6d.....	62½
		" " 1 square lawn, 6s.; 1 y'd velvet ribbon, 5s. 3d.....	1 87½
		" " 1 y'd green crape, 10s. 6d.; 1 p'r silk gloves, 7s. 6d.....	3 00
	3	" " 1 comb, 24s.; 2 side do., 2s. 3d.....	4 75
		" " 1 thimble, 6s.; clasps, 6s	2 00
	23	" " 1 doz. cotton, 2s. 4d.; 1 p'r scissors, 3s. 9d. (Sept. 23) 1 p'r shoes.....	4 01½
Sept.	23	" " knitting pins, 9d.; 1½ y'ds bombazette, at 6s.; 2 do ribbon, 9d.....	1 87½
Oct.	8	" " 4½ y'ds c. cloth, at 5s 3d.; th'd, 9d.; paste-board, 6d.....	4 14¾
	26	" " 2 blankets for Fanny and children, at 22s. 6d.....	7 50
Nov.	20	" " 8 y'ds tow linen for a bed for them, at 2s. 3d.	3 00

Dec.	6	To paid 3¼ police cloth, at 42s.; padding, 3s. 9d...	$23	37½
		" " binding, 4½d.; boss cotton, 2¼d.; tape, 9d.; 7 silks, at 4½d.....		67
		" " 5½ y'ds lutestring, at 9s.; 2 y'ds bl'k ribbon, at 1s. 6d.....	8	75
129				
		" " 1½ w't ribbon, at 2s.; ⅜ do. book muslin, at 12s	1	25
		" " 1 y'd velvet ribbon, 4s. 6d.; 2 y'ds brown holland, at 4s. 6d.....	2	25
	14	" " Mrs. North, for making, 45s.; buttons and silk, 18s.; th'd and moulds, 25c.....	10	75
	31	" " ⅓ my expenses to Paris this year.....	1	00
		" " exchange on 9.73; here is more than good	3	24½
		" board, washing, &c., this year.....	52	00
		" services hiring out negroes, &c.....	20	00
		" balance due.....	2,699	34½
			2,946	35¾

1822.		*Cr.*		
Jan'y	1	By balance bro't forward.....	$2,611	06½
		" John Chrystall, for the hire of Fanny and two children for 1821.....	27	50
		" Sam'l Pyke, for the hire of Peyton, 1821.....	95	00
		" same, for the hire of Pleasants, 1821.....	40	00
		" Wm. Gilliam, for the hire of Rhoda, 1821.....	20	00
		" int. on $2,546 55¼, 1 y'r.....	152	79¼
			2,946	35¾

Dr. Caroline Boyce (orphan) in acc't with Gerard McKinney and Elizabeth, his wife, guardian.

1823.				
Feb'y	4	To ⅜ y'ds m. muslin, at 12s.; 1 bunch floss, 1s. 6d.	$1	00
	27	" 1 p'r leather shoes, 21s.; p'd Mar. 7, Dr. Boswell, 42s.....	10	50
Mar.	7	" ½ q'r paper, 9d.; 1 oz. pins, 1s. 6d.....		37½
June	3	" paid for muslin robe, 36s.; 1 p'r necklace, 6s ..	7	00
		" " breastpin, 37s. 6d.; 2 sidecombs, at 2s. 3d.	7	00
		" " 6 y'ds pink gingham, 4s. 3d.; ½ y'd c'd muslin, at 6s.....	4	75
		" " 1 pink shawl, 15s.; 1 p'r prunella shoes, 18s.....	5	50
		" " 2¾ y'ds c. muslin, at 6s. 9d.; ½ ps. tape, at 1s. 6d.....	3	22
		" " ⅜ y'ds book muslin, at 12s ; 1 p'r cotton hose, 9s.....	2	25
	5	" " whitening and dressing bonnet.....	4	37½
		" " making dress, and trimmings.....	2	87½
Aug.	2	" " 5½ y'ds Irish linen, at 6s ; 1 y'd drilling, 6s.....	6	50
		" " 2 square lawn, at 4s. 6d.; 1 p'r m. shoes, 18s.....	4	50

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		To paid comb, 30s.; 1 p'r gloves, 6s		$6 00
	19	" " dying and dressing crape dress		2 25
		" " ½ y'd cotton cloth, at 4s. 6d.; 1 h'k silk, 9d.		50
	27	" " 1 p'r m. shoes, 9s.; mending comb, 1s. 6d.		1 75
		" " ½ y'd b. muslin, 12s.; 2 h'ks silk, 9d.		1 25
		" " ½ y'd lutestring, 10s. 6d.; ½ ps. lutestring ribbon, at 21s		2 62½
		" " 2 y'ds satin do., at 9d.; 1 silk net shawl, 12s		2 25
		" " 1 paper pins, 1s. 6d.; 1 box ditto, 1s. 6d.		50
Oct.	6	" " 1 p'r cotton hose, 9s.; 8 lbs. boss cotton, 1s. 6d		1 75
	29	" " mending shoes, 3s.; tooth-brush, 3s		1 00
Nov.	13	" " 6 y'ds calico, at 3s. 9d.; (27) 2 blankets for P. and Pleasants, at 21s		10 75
	27	" " 1 doz. cotton, 2s. 3d.; tooth-powders, 3s.		87½
		" " 9 y'ds poplin, at 6s.; merino shawl, 2s		11 00
		" " John Darrace, tuition in dancing, (omitted 2 Oct.)		10 00
		" " George Dunlap, for board during the time,		7 50
Dec.	22	" " William Boyce, for 1 p'r l. shoes, $3; trimmings, 12s		5 00
		" ditto for Dr. Davenport's acc't		16 87½
		" " 1½ y'ds silk, at 12s.; 3 y'ds flannel, at 9s.		7 50
		" " ½ my expenses to Paris twice		1 50
		" exchange on $44 28; *Heres* more than goods, 44 28		22 14
	31	" board, washing, &c., for this year		52 00
		" services hiring out negroes, &c		20 00
		" balance due		2, 808 45
				3, 053 31

1823. *Cr.*

Jan'y	1	By balance bro't forward		$2, 699 34½
		" Samuel Pyke, for the hire of Payton for 1822	$95 00	95 00
		" same, for Pleasants, 1822	45 00	45 00
		" William Gilliam, hire of Rhoda for 1822	25 00	25 00
		" John Chrystal, for the hire of Fanny and ch'n	30 00	30 00
Dec.	31	" interest on $2, 649 48½, 1 year		158 96½
				3, 053 31

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1824.

Jan'y	30	To 1 crape dress, $11; 1 comb, 3s	$11 50
		" paid for 4 yds bl'k linen, 3s. 9d.; ½ yd satin, at 15s	3 75
		" 2 pcs blk satin ribbon, at 9s.; 2 h'k's, silk, at 9d.	3 25

Feb'y	5	To paid 1 pr leather shoes, 21s.; (17th,) 3½ yds m. muslin, at 12s	10	50
	17	" 1½ yds wt. ribbon, at 3s.; ½ qr. paper, at 2s. 3d.		93¾
		" paid 1 sidecomb, 4s. 6d.; 1 stran beads, 9d	2	25
Mar.	1	" 5½ yds c. cloth, at 3s. 9d.; (26th) 2½ do. check, at 3s	3	44
	26	To paid 1 lb. cotton, 1s. 6d.; 1 muslin h'd'k'f, 6s	1	25
		" 1 lb. raw cotton 1s. 6d.; 1 muslin h'd'k'f, 6s.	1	25
May	24	" 3⅜ yds lace, at 12s.; 3¾ yds dimity, at 3s.9d.	9	09½
		" ⅞ jaconet muslin, at 9s.; ⅜ yd b. muslin, at 12s	2	07
		" 6½ yds calico, at 3s.; 1 yd c. muslin, 7s. 6d.	4	50
		" 1 pr cotton hose 10s. 6d.; 1 pr silk shoes, 21s	5	25
		" 1 pr beaver gloves, 6s. 9d.; 1 pr silk do., 7s. 6d	2	37½
		" 5¼ yds printed muslin, at 6s. 9d	5	91
		" 2½ yds ribbon, at 1s. 6d.; 1 silk shawl, 21s.	4	12½
		" 2 h'ks floss cotton, at 9d.; ½ yd Irish linen, at 5s. 3d		68¾
		" repairing & altering bonnet, & trimmings	7	25
		" 1 reticule, 19s. 6d	3	25
Aug.	2	" 1 pr l. shoes, 21s.; 1 pr morocco do. 18s.	6	50
Sept.	15	" 4 papers pins, at 21c.; 1 fine comb, 50c.	1	34
Nov.		" 6 yds French calico, at 12s	12	00
	7	" 8¾ yds fig'd silk, at 12s.; silk for trimming (J. R. D.)	19	50
		" 7 yds calico, at 3s. 9d.; 7 ditto, at 5s. 3d.	10	50
		" 1½ yds c. muslin, at 3s. 9d.; ¼ ditto, at 6s.	1	18¾
		" ¾ yd book muslin, at 10s. 6d.; ½ do. fig'd do., at 10s. 6d	1	53½
		" 1 spool boss cotton, 1s. 6d.; 1 bunch tape, 13½		43¾
		" 1 steel buckle, 6s.; 1½ doz. pearl buttons, 1s. 6d	1	37½
		" sewing silk, 1s. 6d.; spool floss cotton, 37½ cts.		62½
		" 1 penknife, 6s.; 1 lead pencil, 9d	1	12½
		" 1 large comb, 48s.; 2 side do., at 3s	9	00
		" 4½ yds c. cloth, at 3s.; needles, 9d	2	37½
132				
Dec.	10	" $50 del'd you to buy a cloak & bonnet, &c.	50	00
	31	" ½ my expenses to Paris twice	1	50
		" board, washing, &c., this year	50	00
		" services hiring out negroes, &c	20	00
		" 50 pr c. discount on $67 36, btween heirs & expenditures	33	68
		" balance due	2,933	33
			3,241	65

Cr.

1824.				
Jan'y	1	By balance bro't forward	$2,808	45
		" Sam'l Pyke, for the hire of Payton, 1823	$150 00	

		By same, for the hire of Pleasants, 1823....	$75 00		
		" Wm. Gilliam, for the hire of Rhoda, 1823.....	30 00		
		" John Chrystal, for the hire Fanny and 3 children for the year 1823.....	15 00		
				$270 00	
Dec.	31	" int. on $2, 770 13, 1 year.....		163 20	
				3, 241 65	

Dr. Caroline Boyce (orphan) in acc't with Gerard McKinney and Elizabeth, his wife, guardian.

1825.					
Jan'y	19	To 1 pr prunella shoes, 21s ; (Mar. 12) 1 pr l. ditto 18s.....		$6 50	
Mar.	28	To paid for ½ yd I. linen, at 7s. 6d.; 3 h'ks silk, 1s. 6d.			87½
Ap'l	12	" Wilson for a buroe.....		35 00	
	22	" 1 doz. cotton, 2s. 3d.; (26th) 2¾ yds dimity, at 7s. 6d.....		3	81½
May	14	" 1 pr gloves, 7s. 6d.; 1 comb, 2s. 3d.....		1	62½
June	4	" 1 bonnet, 48s.; 1 bandbox, 3s.....		8 50	
		" 1 parasol, 39s.; 1 handkerchief, 24s.....		10 50	
		" 1 fan 4s. 6d.; 1 neck comb, 7s. 6d.....		2 00	
		" 1 yd Russia drilling.....		1 25	
			Specie.		
Aug.	22	" 8 yds I. linen, at 4s. 6d.; 1½ yds fig'd muslin, at 4s. 6d.....	$7 12½		
		" 1 yd Rusha drilling, 4s. 6d.....	75		
		" 1 bobinet lace, 9d.; needles, 1s. 6d	37½		
		" 1 pr scissors, 4s. 6d.....	75		
		Carried down.....	9, 00		
Sept.	20	" William Boyce, for articles bo't for you in papers.....		20 00	
				90	06½
133		" " ½ of the above, $90 06½, is		45	03¼
				45	03¼
		To the $9 specie, bro't down.....		9 00	
		" ½ expenses to Paris twice.....			75
Dec.	31	" services hiring negroes, &c., for the year 1825.		20 00	
		" board, washing, &c., 8 mos., at $52 p'r year.....		34 00	
		" balance due.....		3, 151 57	
				3, 260	35¼

1825.		*Cr,*		
Jan'y	1	By balance brought forward.....		$2, 933 33
		" Sam'l Pyke, for the hire of Payton, for 1824.....	$150	
		" same, for the hire of Pleasants, 1824	100	
		" Wm. Gilliam, for the hire of Rhoda 1824.....	45	

		By Moses Baldwin, Fanny and children, their support, 1824, nothing.	
Dec.	31	Interest on $2,992 05¾, 1 year.....	$179 52¼
			3, 260 35¼

Dr. Caroline Boyce (orphan) in acc't with G. McKinney and Elizabeth, his wife, guardian.

1826.			
Feb'y	14	To 5 yards cotton cloth, at 1s. 6d.; 1 pair leather shoes, 13s. 6d.....	$3 50
Oct.	21	" 1 p'r scissors, 3s. 9d.; 2 y'ds ribbon, at 9d....	1 00
	26	" paid D. Boyce, exchange of horses.....	10 00
Nov.	12	" 1 blanket each for Rhoda, Fanny, and Sam, at 10s. 6d.....	5 25
Dec.		" postage, 2 letters from Pyke, 6¼.....	12½
Jan'y	1	" balance due.....	3, 344 82
			3, 364 69½

1826.		*Cr.*	
Jan'y	1.	—By balance brought forward.....	$3, 151 57
		Com.	
		" Sam'l Pyke, for the hire of Payton, $170	1825
		" same, for the hire of Pleasants.... 110	1825
		" Wm. Gilliam, for the Rhoda..... 50	1825
		330	
134		" $162½ per hundred, equal to.....	203 12½
		By William T. Banion, for the hire of Fanny and her 3 children for 1825.....	10 00
			3, 364 69½
		By balance due 1st Jan'y, 1826.....	3, 344 82

In obedience to an order of the honorable county court of Fayette, we, being two of the commissioners therein named, have examined the foregoing acc't of Gerard McKinney and Elizabeth, his wife, guardian of Caroline Boyce, orphan of William Boyce, dec'd. Vouchers were produced for all but clothing, board, and services, which we have examined and find correct, and believe the acc't correct; and we find the correct balance due said Caroline Boyce to 1st January, 1826, to be as stated, $3,344 82. Order hereto annexed.

Given under our hands this 19th July, 1828.

JOHN BRADFORD.
W. WEST.

August court, 1828.

FAYETTE COUNTY, *to wit:*

This account was produced in court and ordered to be recorded, which is truly done in my office.

Att.: J. C. RODES, *Clk F. C. C.*

COMMONWEALTH OF KENTUCKY, *Fayette County, sct:*

I, James A. Grimstead, clerk of the county court for the county aforesaid, do certify that the foregoing seventeen pages, embracing a settlement of the accounts of Gerard McKinney and wife, guardians of Caroline Boyce, are truly and accurately transcribed from the record of the same in my office.

In testimony whereof, I have herunto set my hand and affixed the seal of said court this 24th day of November, 1846.

[SEAL.] Att.: JAMES A. GRIMSTEAD, *C. F. C. C.*

135 *Dr. The estate of William Boyce, dec'd, in acc't with Gerard McKinney and wife, ex'x, and John Boyce, exec. Cr.*

1812.			
Mar.	10	To cash paid Wright & Putoff, bal. acc't.....	$1 97
	20	" John Boyce's expenses to Virginia.....	25 00
June	26	" paid Redd & Warnock, repairing gig..... ...	10 00
	11	" paid sheriff, per bill.....	9 92
July	25	" tax on writ *vs.* Moore.....	50
		" John Boyce's expenses at 2 courts, Va.....	2 00
		" horseshoeing	1 62½
Sept.	28	" Ohio land tax.....	26 67
Oct.	25	" Jno Boyce's expenses from Virginia.....	20 14
Dec.	1	" postage, 2 letters, 12½ c. ea.....	25
	8	" Va. Prewitt and the chain-carriers, for land sold Capt. Wm. Smith.....	3 00
		" leather for the family, omitted 10th Nov.....	16 22
	14	" Campbell, for crying the sales 3 days.....	9 00
	19	" Doct. Marsback, per acc't.....	3 17
1813.			
Jan'y	16	To James Munday, per acc't.....	4 00
	18	" postage, 1 letter.....	12½
		" am't of expenditures for the family of E. Boyce, previous to 15th Aug., 1812, p'r bill.....	19 06
		" ditto ditto by G. McKinney since that time until the family divided.....	17 60½
Jan'y	25	" Jno. Boyce for his and Wm's part of money rec'd for sale of land to Smith, McKinney & Harrison	450 98 2-7
		" G. McKinney and wife, their part and the part for Dan'l, Emily, Peggy, and Caroline, for land sold the same.....	1,127 45 2-7
Feb'y	3	" Richard West, p'r bill.....	4 21
	22	" Rob't S. Russell, for measuring land rented Nailon.....	1 00
	24	" W. W. Worsley, per acc't.....	4 00
	25	" cleaning hemp, 5½ days, at 3s. 9d., Mansfield's Harry.....	3 44
		" Wm. W. Kidd, for wagoning hemp.....	1 50
June	23	" James B. January, p'r rec't.....	2 50
			1,765 32½

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Aug.	13	To cash paid the sheriff of Fayette, per rec'pt.....	7 70½

Omitted in March.		To Gerard McKinney, his expenses and shoeing horse, for going to Surry, Virg'a, and while there	$28	50
		" ditto, returning and horseshoeing	26	00
Omitted in Feb'y.		" Jno. Boyce, his expenses and horseshoeing, for going to Surry, Va	26	12½
		" ditto, for expenses to Southampton from Surry, Va	1	56¼
		" ditto, for expenses of his horse while in Va	10	00
		" ditto, for shoeing horse to return and refitting on road	1	62½
		" ditto, his expenses from Va	25	00
Sept.	21	" Gerard McKinney, his expenses to Todd's Fork, Chillicothe, Ohio, and returning same route	13	00
		" land tax in Ohio for 1813, p'd by McKinney	26	67
		" connection plot paid by same		50
		" Jno. Boyce, for his expenses going to Todd's Fork and returning	9	25
		" David Sewell, for his services for renting out Ohio land, collecting same, and boarding G. McKinney, and John Boyce, p'r rec't	10	00
	22	" cash paid by G. McKinney for breaking flax	2	36
		" postage letters from Jno. Boyce and J. Hutt		37½
		" ditto, 1 quire paper		37½
Oct.	9	" ditto, postage letter from Jno. Hutt		12½
Nov.	6	" cash paid Linton, for surveying Ohio land	11	00
		" John Smith and D. Thompson, chain-carriers	4	50
		" David Lowell, per receipt	7	00
		" G. McKinney's expenses to, in, and returning from Ohio	11	56¼
		" John Boyce's do. going and returning	8	75
	17	" cash paid John Boyce, for his and William's part of money rec'd of Hadley & Oxley for Ohio land sold them, their first payment	430	92 6-7
		" ditto, paid G. McKinney and wife for their part and the parts of Dan, Emily, Peggy, and Caroline, rec'd as above	1,077	32 1-7
			3,505	56

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1814.

Jan'y	10	" cash paid Gerard McKinney and wife, for their part and the parts of Dan'l, Emily, Peggy, and Caroline, of $3,151 99¾, rec'd of Wm. Smith, R. C. Harrison, and G. McKinney, for K'y land, their last payment	2,251	42 3-7
		" ditto paid John Boyce, for his and Wm. Boyce's part of the above money	900	56 4-7
	12	" paid G. McKinney and wife, for their part and the parts of Dan'l, Emily, Peggy, and Caroline, of $500, rec'd of Cop, his first payment of Ohio land	357	14 2-7

		To paid John Boyce, for his and Wm.'s share of $500, as above	$142 85 5-7
		" paid G. McKinney and wife am't due them to make their portion in negroes equal	8 58
		" paid same, guardian of Peggy Boyce, to make her portion in negroes equal	33 57
		" paid surveyor for surveying lands sold by G. McKinney 3d Jan'y	2 00
	15	" paid John Hutt for advertising Ohio land, 10s. 6d.; and 1s. 6d. he paid auditor for a plot	2 00
	24	" postage, letter from Jno. Hutt and to him	50
Feb'y	10	" ditto from Linton	12½
		" W. W. Worsley for advertisements	50
	26	" postage, letter from Harris	18¾
May	28	" paid Dr Ridgely, pr acc't	6 04½
June	2	" ditto Leonard Young	2 00
	11	" postage, letter from Linton	12½
July	5	" paid Jno. D. Young for fee bill	13 68½
Aug.	8	" postage, letter from Linton	12½
			7, 226 99
Sept.	1	" cash paid G. McKinney and wife, for their part and the parts of Daniel, Emily, Peggy, and Caroline Boyce's, of $1,956 82, rec'd of Hadley for Ohio land	1, 397 73
		" cash p'd John Boyce for his and Wm.'s part of the above $1,956 82	559 09
138			
Sept.	1	" postage, letter James Harners	18¾
Nov.	4	" paid E. Harvey for surveying Ohio land sold Cass, 9s.; chain-carriers, 4s. 6d	2 25
	10	" paid James Harvey for board G. McKinney and John Boyce while on business in Ohio	8 00
		" paid expenses of John Boyce and G. McKinney going to and returning from Ohio	16 00
	15	" paid G. McKinney and wife, for their parts and the parts of Daniel, Emily, Peggy, and Caroline, of $150 rec'd of Cass for Ohio land sold him	107 14 2-7
		" paid John Boyce for his and Wm. Boyce's part of the above $150	42 85 5-7
	29	" postage of a letter to and from Hutt	25
Dec.	1	" ditto ditto	37½
		" ditto postage of a letter to and from Trolter, to pay land tax	25
	5	" paid land tax in Ohio	40 00
	10	" postage of a letter to and from Hutt	25
		" paid for quire letter paper	50
1815.			
Jan'y	11	" postage of a letter from Linton	18¾
Mar.	15	" ditto from Harris	18¾
Ap'l	24	" ditto from Wall	12½
May	9	" paid G. McKinney and wife, for their part and the parts of Daniel, Emily, Peggy, and Caroline Boyce, of $194 50, rec'd of Gen'l Taylor for land warrant	138 92 6-7

		To John Boyce, for his and Wm. Boyce's part of the same $194 50	$55	57 1-7
			9,596	87½
1815.				
June	8	" cash paid for postage, letter from Birdsall		25
	22	" shoeing horses to go to Ohio	1	50
July	7	" G. McKinney's expenses to, while there, and returning from Ohio	10	00
	8	" postage, letter from Harners		18¾
139		" Gerard McKinney & wife, their and the parts of Dan'l, Emily, Peggy & Caroline Boyce's, for their part of $900 rec'd of Birdsall in part for Ohio land sold him	642	85 6-7
		" John Boyce, for his & Wm. Boyce's part of the above $900	257	14 1-7
	17	" clerk's fee bill		33
Aug.	14	" G. McKinney's expenses to Williamsburg, Va. $25 00		
		" horseshoeing, 87½; do. 75 1 62½		
			26	62½
		" ditto at W'msburg, 5 days at Surry court and back to W'msburg aad while there	15	77
		" horseshoing in Surry		50
	21	" cash paid the clerk, ch'g W'msburg fees	7	40
	28	" ditto Jno. Bartle, $1 80 & 42; James Jones, $2	4	22
	30	" James Turdent, attorney, in Surry, Va	15	00
	31	" Wm. Scammill, D. S. S. C., his fees $2 61		
		" ditto clerk's fees, $1 58, $1 48 3 06		
			5	67
		" Blanks Moody's attendance	1	56
Sept.	29	" Richard E. Parker, attorney, drawing bill box	6	00
Oct.	4	" shoeing horse, 6s.; on the road, 50 & 62½	2	12½
	29	" G. McKinney's expenses from Virginia	25	00
Dec'r	5	" postage, letter to Chillicothe to pay land tax		18¾
	8	" cash paid by G. McKinney for Ohio land tax	45	52
			10,664	71¾
1816.				
Feb'y	13	" cash paid postage, 2 letters from Moody & Hamer's		63
Mar.	22	" expenses of G. McKinney & Jno. Boyce to and from Todd's Fork, Ohio	18	37½
		" shoeing horse before G. McKinney to ride to Ohio		75
	23	" paid John Boyce, for his part & Wm. Boyce's part of money rec'd of Oxley, Birdslay, Cass & Hadley, for Ohio land sold them, total am't— $2, 744 33	784	09 3-7
		" Gerard McKinney & wife, for their part and the parts of Daniel, Emily, Peggy & Caroline, of the above $2, 744 33	1,960	23 4-7
140				
April	16	" paid postage, letter from Linton		25
May	22	" G. McKinney's expenses to Williamsburg, Va. $25 00		
		" shoeing horse while there 1 00		
			26	00

		To G. McKinney's expenses while at W'msburg, attending c't	$13 50
June		" ditto going to Surry, while there attending 2 courts, going N. Carolina, returning to Surry and W'msburg	28 06¼
		" shoeing horse there, $1; returning, $1 25	2 25
May	24	" paid William Brown in W'msburg chancery court *vs.* Brun	20 00
	29	" John Falcoln, cl'k Surrey	12 78
June	1	" John Mallecte, $2; do. A. Jones, $2 96	4 96
	24	" Atkins, attorney in Surry	10 00
	28	" Wm. Coleman, master court W'msburg	63 87½
July 1 to Aug.	3	" Gerard McKinney's expenses from Virginia	25 00
	3	" postage, letter from Boyce, 25; 1 from Linton, 18¾	43¾
Sept.	7	" ditto from James D. Edwards, Va	25
	14	" ditto from same	25
			13, 636 41
1817.			
Sept.	3	" cash paid for postage from B. Moody, 25, and one from Harness	43¾
1818.			
May	29	" paid Gerard McKinney and wife their part and the parts of Daniel, Emily, Peggy and Caroline Boyce's, of $900 rec'd of Hadley	642 85 5-7
		" paid John Boyce his part of the said $900 rec'd of Hadley	128 57 1-7
June	3	" paid Wm. Boyce his part of the said $900 rec'd of Hadley	128 57 1-7
Omitted		" postage, letter from Linton, Aug. 3, 1816, not extended page	25
			14, 537 09¾
1813.			
Sept.	21	" cash paid G. McKinney and wife for themselves, and as guardians for Daniel, Emily, Peggy and Caroline Boyce, their part of $70 rec'd for Ohio rents	50 62½
		" cash paid John Boyce for himself, and as guardian of William, their part of the same $70	20 00
141			
Omitted			
Nov.	6	To cash paid G. McKinney and wife for themselves, and as guardians to Daniel, Emily, Peggy, and Caroline, their parts, $27 50	19 64 2-7
		" cash paid John Boyce for himself, and as guardian to William, their part of same $27 50, rec'd for Ohio rents	7 85 5-7
Omitted			
Jan. 12, 1814.		" cash paid G. McKinney and wife for themselves, and as guardian to Daniel, Emily, Peggy, and Caroline, their part of $64, received for Ohio rents	45 71 3-7
		" cash paid John Boyce for himself, and as guardian to William, by their part of the above $64	18 28 4-7

Omitted			
Nov. 11, 1814.	To cash paid G. McKinney and wife for themselves, and as guardian of Daniel, Emily, Peggy, and Caroline, their part of $50 00, rec'd for rents Ohio land		$35 78 4-7
	" cash paid John Boyce for himself, and as guardian to William, their part of the same $50 00		14 31 3-7
1816.			
Mar. 23	" cash paid G. McKinney and wife for themselves, and as guardian to Daniel, Emily, Peggy, and Caroline, their part of $45, rec'd for Ohio rents		32 14 2-7
	" cash paid John Boyce for himself, and as guardian to William, their part of $45, as above		12 85 5-7
			14, 794 32¼
	To commission 6 per ct. we think a reasonable compensation, under the consideration that the ex'rs were compelled several times to go to the Ohio, one 3 times to the lower points of Virginia, the other twice, and one from Virginia to N. Carolina; the business being in Surry, Isle of Wight, Southampton, &c.		1, 033 30½
	To balance due the estate		1, 394 14½
			17, 221 77½

Credits.

1812.				
Mar. 1	By cash on hand			$62 87½
	" rec'd of Cope, part of rent			10 00
142				
May 1	" S. & G., bal. of ac't			39 07
July	" rec'd for ½ notes in Virginia			100 00
	" 1 cowhide sold, 12s.; hemp seed sold W. Robb, 54s			11 00
Nov.	" 2 do. do. 18s. and 21s			6 50
Dec. 8	" shoemaking done by old John for M. B. Patton			16 67
1813.				
Jan'y 1	" rec'd of Wm. Smith, land sold him.	$374 00		
	" " Gerard McKinney, ditto..	515 38		
16	" " R. C. Harrison, ditto...	689 06		
			1, 578 44	
20	" James McMahon, his purchases at the sale			4 50
Feb. 23	" J. Nailor, part of rent			51 00
June 14	" of constable, bal. of rent from Cope, and int.			13 37½
29	" J. Nailor, on ac. rent			10 00
Sept. 21	" rents of Ohio land			70 62½
Nov. 6	" Aaron Oxley, for Ohio land sold him, 1st payment	$508 25		
	" John Hadley, for ditto, 1st payment	1, 000 00		
			1, 508 25	
Dec. 1	" am't of the sales of personal estate			2, 383 43½
	" rec'd of Morrison, Boswell & Sutton, for 15 to 1 ct. 11 lbs. hemp, at 4s			61 37
				5, 927 11

1814.					
Jan'y	1	By cash	rec'd of Morrison, Boswell & Sutton, for 200 lbs. rough flax.....		$25 00
		"	G. McKinney, 8 lbs. cleaned ditto, at 1s. 6d		2 00
	10	"	of Wm. Smith, for his last payment, Ky. land sold him.....	$721 00	
		"	ditto of R. C. Harrison, for ditto..1, 378 12¾		
		"	ditto of G. McKinney, for ditto..1, 052 87		
					3, 151 99¾
	12	"	ditto of cash for his first payment for Ohio land.....		500 00
		"	ditto of John Boyce, for his over portion in division of negroes.....		6 43
		"	ditto of John Boyce, guardian of William Boyce, for his over portion of negroes..		16 43
		"	G. McKinney and wife, guardian of Dan'l Boyce, for his over portion of division of negroes		16 43
		"	ditto of the same, guardian of Emily Boyce, for her over portion in division of negroes		1 43
143		"	ditto of the same, guardian of Caroline Boyce, for her over portion in same.....		1 43
					9, 648 25¾
1814.					
Sept.	1	By cash	rec'd in full of Hadley for Ohio land sold him, $1,916 82 and $40 int.		$1, 956 82
Nov.	1	"	rec'd of Richard Cass 1st payment for Ohio land sold him.....		150 00
	10	"	rec'd of Hadley, for tax on his land.....		14 58½
		"	ditto of Oxley, same on his.....		5 34¾
		"	ditto of Cass, same on his.....		4 50
1815.					
May	9	"	rec'd of Gen'l James Taylor, for a land warrant of 389 acres, at 50 c.....		194 50
					11, 974 01¾
July	3	By cash	rec'd of James Birdsall in part for Ohio land sold him.....		900 00
		" ditto	rec'd of same for expenses to and from Ohio.....		10 00
					12, 884 01¾
Mar.	25	" cash	rec'd of Birdsall, for Ohio land tax for 1814–'15, with int. included.....	$29 00	
		" ditto	of Cass, for 1815, ditto.....	8 20½	
		" ditto	of Oxley, for 1815, ditto.....	9 78	
					46 96½
		"	rec'd of Aaron Oxley, his last payment for Ohio lands sold him.....	508 00	
		"	d'ble int. till paid.....	84 66½	
					592 66½
		"	rec'd of Richard, cash, for his last payment for Ohio land sold him.....	250 00	
		"	d'ble int. till paid.....	41 79½	
					291 79½

		By rec'd of Birdsall his last payment for Ohio land sold him	$788	12½	
		" loyal interest till paid	156	15	
			944	27½	
		" paid out of this N. Linton's ac't for selling, &c.	84	40½	
					$859 87
		" ditto rec'd of Hadley his first payment for Ohio land sold him last			1,000 00
May	29	" Blanks Moody, Virginia			150 00
June	24	" ditto of the comm'rs of the Surry c'rt, Va., for the debt due from Moris' estate			309 86
					16,135 17¼

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1818.

Mar.	28	By cash rec'd of Wm. Hadley in full for Ohio land sold him		900 00
				17,035 17¼
Omitted				
Nov.	6	By cash rec'd for rent of Ohio land		27 50
1814.				
Jan'y	12	" ditto ditto		64 00
Nov.	11	" ditto ditto		50 10
1816.				
Mar.	23	" ditto ditto		45 00
				17,221 77¼
		By balance due		$1,394 14½

In obedience to an order of the worshipful court of Fayette county, we, three of the commissioners therein named, have examined the within ac't of Gerard McKinney and Elizabeth, his wife, executrix, and John Boyce, executor, of the estate of Wm. Boyce, dec'd, and find them correct, so far as we can judge, and the items marked *v*, vouchers, *ware* produced and found correct; and after deduct what we think a very reasonable compensation for their services and trouble of the ex'rs, find a balance due the estate of $1,394 14½, as above.

Given under our hands this 11th day of October, 1824.

LINDSAY COLEMAN.
JOHN BRADFORD.
WILLIAM WEST.

KENTUCKY, *Fayette County to wit, October court*, 1824:

This settlement of the accounts of Gerard McKinney, and Elizabeth, his wife, executrix, and John Boyce, executor, of the estate of William Boyce, deceased, was returned to court examined, approved of, and ordered to be entered of record, and the same is truly recorded in my office.

Att.: JAMES C. RODES, *Clk.*

145 COMMONWEALTH OF KENTUCKY, *Fayette County, sct:*

I, James A. Grimstead, clerk of the county court for the county aforesaid, do certify that the foregoing nine pages, embracing a settlement of the accounts of Gerard McKinney and wife, and John Boyce, ex'x and ex'rs of Wm. Boyce, dec'd, are truly and accurately transcribed from the record of the same in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 24th day of November, 1846.

[SEAL.] Att.: JAMES A. GRIMSTEAD, *C. F. C. C.*

146 This indenture, made this sixth day of November, in the year of our Lord one thousand eight hundred and thirteen, between Gerard McKinney and Elizabeth, his wife, executrix, and John Boyce, executor, of William Boyce, dec'd, of the county of Fayette and State of Kentucky, of the one part, and William Hadley, of the county of Chatham and State of North Carolina, of the other part, witnesseth: That the said Gerard McKinney and Elizabeth, his wife, executrix, and John Boyce, executor, of William Boyce, dec'd, for and in consideration of the sum of twenty-nine hundred and sixteen dollars and eighty-two cents, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain, sell and confirm, unto the said William Hadley, his heirs and assigns, a tract and parcel of land situate and being in the counties of Clinton and Warren, in the State of Ohio, on Todd's fork, being part of two military surveys, Nos. 2245 and 2227, agreeably to two patents to the said William Boyce, one bearing date 26th March, 1802, the other, 5th April, 1802, containing nine hundred seventy-two acres, one rood, and nine poles, beginning at a black walnut, ash and elm, north corner to survey No. 2245; thence with the easterly line thereof, correcting the course S. 37, 37 E. 386 poles, to the middle of Todd's fork, in said line, where a beech on the south

147 bank 20 inches diameter bears S. 37, E. 4 poles; thence down the middle of the creek with the meanders thereof: S. 21 E. 12 poles, S. 14½ W. 74 poles, S. ½, W. 32, S. 20, E. 38, S. 7½, W. 34, S. 23, W. 32, S. 32, W. 20, S. 67, W. 20, N. 89, W. (passing the mouth of Sewell's run at 3 poles,) 42, N. 52, W. 25, N. 85, W. 54, N. 31, W. 28, N. 59½, W. 20, N. 68, W. 42, S. 81, W. 44, S. 64½, W. 41 7-10 poles to the corner in the middle of the creek in the westerly line of the survey where a large forked sycamore on the south bank of the creek bears S. 32 E. 5 poles; thence with said line, correcting the course S. 38 W. 282¼ poles, crossing a branch at 104 poles and the Xenia road at 238 poles to a beech westerly corner to said survey; thence with the northerly line thereof, correcting the course N. 42, 42 E., crossing a branch at 114 poles and the Xenia road at about 280 poles, 375 poles the beginning; together with all and singular the premises thereunto belonging, or in anywise appertaining; to have and to hold the said land hereby conveyed, with all the appurtenances, unto the said William Hadley, his heirs forever. And the said Gerard McKinney and Elizabeth, his wife, executrix, and John Boyce, executor, of William Boyce, dec'd, for themselves, their heirs, executors, and administrators, the aforesaid tract of land and premises unto the said William Hadley, his heirs, and assigns, against the claim or claims of all and every person or persons whatsoever claiming under the said William Boyce, or under the said Gerard McKin-

ney and Elizabeth, executrix, or the said John Boyce, executor, do
148 and will warrant and forever defend by these presents.

In witness whereof, the said parties have hereunto set their hands and seals the day and date first above written.

GERARD McKINNEY and
ELIZABETH, his wife, *Exec'x.* [SEAL.]
JOHN BOYCE, *Exec'r.* [SEAL.]

Witness:
ELI HARVEY.
ISAAC HARVEY.
JOHN HADLEY.

STATE OF OHIO, *Clinton County, ss:*

Personally appeared before me, the subscriber, one of the acting justices of the peace for said county, John Hadley and Eli Harvey, and on their solemn affirmation saith that the within signed Gerard McKinney, for himself, and Elizabeth, his wife, and John Boyce, did sign, seal, acknowledge, and deliver the foregoing deed in their presence, for the purpose therein specified.

Given under my hand and seal this 19th day of March, 1814.

JACOB HALE, *J. P.*

No. 358. Rec'd for record 22d March, 1814. Recorded 4th April, 1814.
R. EACHUS, *R. C. C.*

RECORDER'S OFFICE, *Clinton County, O., ss:*

I do hereby certify that the foregoing instrument is a correct copy of a deed remaining on the land records in this office.

[SEAL.] Witness my hand and official, at Wilmington, this 11th July, A. D. 1851.

AMOS T. SEWELL, *R. C. C.*

149 This indenture, made this twenty-third day of March, in the year of our Lord one thousand eight hundred and sixteen, between Gerard McKinney and Elizabeth, his wife, executrix, and John Boyce, ex'r, of William Boyce, dec'd, of the one part, of the county of Fayette, State of Kentucky, and William Hadley, of the county of Clinton and State of Ohio, of the other part, witnesseth: That the said Gerard McKinney and Elizabeth, his wife, executrix, and John Boyce, ex'r, of William Boyce, deceased, for and in consideration of the sum of one thousand nine hundred dollars, current of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents doth grant, bargain, sell and confirm, unto the said William Hadley, his heirs and assigns, a tract or parcel of land situate and being in the county of Clinton, in the State of Ohio, on Todd's fork, being part of two military surveys, No. 2227 and 2245, agreeable to two patents to the said William Boyce, one bearing date 5th April, 1802, and the other 26 March, 1802, containing three hundred and seventy-eight acres and thirty-one poles; beginning at a supposed corner in the middle of Todd's fork where a large forked sycamore on the south bank bears S. 32, E. 5 po.; thence S. 38 E., crossing the east fork 136½ poles to 3 sugar trees; thence S. 35, 38 E. 365¾ po., to a stake where
150 a white oak 9 inches diameter bears N. 55, W. 9 links, and a sugar tree 4 in. dia. bears S. 69 E. 7 links, corner to Aaron Oxley; thence N. 53 E. 194 poles 16 links to a stake where a gum 12 in. dia. bears N. 53 E. 10 links, and a sugar tree 12 in. dia. bears N. 51 W. 22 links, in the line of Aaron Oxley and corner to Ric'd Cast; thence with said Cast's

line N. 36¾ W. 199 po., to the middle of Todd's fork; thence down the said creek with the meanders thereof to the beginning; together with all and singular the premises thereunto belonging or in anywise appertaining; to have and to hold the said land hereby conveyed, with all the appurtenances, unto the said William Hadley, forever. And the said Gerard McKinney and his wife Elizabeth, ex'x, and John Boyce, ex'r, of William Boyce, dec'd, for themselves, their heirs, executors and administrators, the aforesaid tract of land and premises unto the said William Hadley, his heirs and assigns, against the claim or claims of all and every person or persons whatsoever claiming under the said William Boyce, or under the said Gerard McKinney and Elizabeth his wife, ex'x, and the said John Boyce, ex'r, do and will forever warrant and defend by these presents.

In witness whereof, the said parties have hereunto set their hands and seals the day and date first above written.

GERARD McKINNEY and
ELIZABETH, his wife, *Ex'x.* [SEAL.]
JOHN BOYCE, *Ex'r.* [SEAL.]

Witness:
WILLIAM PYLE.
JAMES HARRIS.

151 STATE OF OHIO, *Clinton County, sct:*

Personally appeared before me, one of the acting justices of the peace in and for the county aforesaid, Gerard McKinney, for himself, and Elizabeth, his wife, executrix, and John Boyce, ex'r, of William Boyce, deceased, and acknowledged the signing, sealing, and delivering the foregoing deed, for the purposes therein specified.

Given under my hand and seal this 23rd day of March, 1816.

JAMES HARRIS. [SEAL.]

No. 182. Received for record 28th August, 1816. Recorded 12th September, 1816.

J. W. MAGEE, *R. C. C.*

RECORDER'S OFFICE, *Clinton County, ss:*

I do hereby certify that the foregoing is a correct copy of deed remaining on the land records in this office.

[SEAL.] In witness whereof, I have hereunto set my hand and official seal this 11th July, 1851.

AMOS. T. SEWELL, *R. C. C.*

152 This indenture, made this twenty-2d day of March, in the year of our Lord one thousand eight hundred and sixteen, between Gerard McKinney and Elizabeth, his wife, executrix, and John Boyce, executor, of Wm. Boyce, deceased, of the county of Fayette and State of Kentucky, of the one part, and James Birdsall, of the county of Clinton and State of Ohio, of the other part, witnesseth: That the said Gerard McKinney and Elizabeth, his wife, ex'x, and John Boyce, ex'r, of William Boyce, dec'd, for and in consideration of the sum of one thousand six hundred and eighty-eight dollars and twelve and ½ cents, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain, sell, and confirm, unto the said James Birdsall, his heirs and assigns, a tract and parcel of land situated and being in the county of Clinton and State of Ohio, on the waters of Todd's fork, being the entire military No. 2246, agreeable to a patent to the said Wm. Boyce, bearing date the 5th

day of April, 1802, containing by resurvey six hundred and seventy-five acres and thirty-nine poles; beginning at two ashes, corner to Thos. Banks's survey of seven hundred acres, in the line of Horatio Gates, correcting the course of the original survey S. 65 1-6 E, 630 1-6 poles, to two sugar trees and a elm; thence S. 82½ W. 176 po., correcting the course to three
153 ashes; thence S. 67¼ W. 379 po., correcting the course to stone, hickory, and two sugar trees; thence N. 6½ W. 432 poles, to the beginning; together with all and singular the premises thereunto belonging or in anywise appertaining; to have and to hold the said land hereby conveyed, with all and singular the appurtenances, unto the said James Birdsall, his heirs forever. And the said Gerard McKinney and Elizabeth, his wife, ex'x, and John Boyce, ex'r, of Wm. Boyce, dec'd, for themselves, their heirs, executors, and administrators, the aforesaid land and premises unto the said James Birdsall, his heirs, and assigns, against the claim or claims of all and every person or persons whatsoever claiming under the said Wm. Boyce or under the said Gerard McKinney and Elizabeth, his wife, ex'x, and the said John Boyce, ex'r, do and will warrant and forever defend by these presents.

In witness whereof, the said parties have hereunto set their hands and seals the day and date first above written. Interlined in the 19th line, word "military;" also in the 21st, the words "by resurveying;" and also on the 2nd page, 15th line, the word "warrant;" and all before signed.

GERARD McKINNEY,
ELIZABETH, his wife, *Ex'x.* [SEAL.]
JNO. BOYCE, *Ex'r.* [SEAL.]

Witness:
JAMES HARRIS.
JAS. W. MAGEE.

154 STATE OF OHIO, *Clinton County, sct:*

This day personally appeared before me, James Harris, a justice of the peace in and for the aforesaid county, Gerard McKinney, for himself, and Elizabeth, his wife, executrix of William Boyce, dec'd, and John Boyce, executor of William Boyce, dec'd, the within grantors, and acknowledged the within to be their hands, seals, and deed, for the purposes therein contained.

Given under my hand and seal this 22d day of March, 1816.

JAMES HARRIS. [SEAL.]

No. 120. Received for record 22 March, 1816. Recorded 26th March, 1816.

ROBERT EACHUS, *R. C. C.*

RECORDER'S OFFICE, *Clinton County, Ohio, ss:*

I do hereby certify that the foregoing instrument is a correct copy of a deed remaining on the land record in this office.

Witness my hand and official seal, at Wilmington, this 11th day of July, 1851.

[SEAL.] AMO. T. SEWELL, *R. C. C.*

155 This indenture, made this twenty-first day of March, in the year of our Lord one thousand eight hundred and sixteen, between Gerard McKinney and Elizabeth, his wife, executrix, and John Boyce, executor of Wm. Boyce, deceased, of the county of Fayette and State of Kentucky, of the one part, and Aaron Oxley, of the county of Clinton and State of Ohio, of the other part, witnesseth: That the said Gerard McKinney and Elizabeth,

his wife, ex'x, and John Boyce, ex'r, of William Boyce, deceased, for and in consideration of the sum of one thousand and sixteen dollars and twenty-five cents, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents doth grant, bargain, sell, and confirm unto the said Aaron Oxley, his heirs and assigns, a tract and parcel of land situated and being in the county of Clinton and State of Ohio, on the waters of Todd's fork, being a part of military survey No. 2227, agreeable to a patent to the said Wm. Boyce, bearing date the 5th day of April, 1802, containing three hundred and fifty-six acres and two roods; beginning at the two hickories and a sugar tree southerly corner of the original survey; thence with the southwesterly line thereof, correcting the course N. 35, 38 W. 155¼ poles, to a stake in said line where a white oak 9 inches diameter bears N. 55 W. 9 links, and a sugar tree 4 inches diameter bears S. 69 E. 7 links; thence N. 53 E., crossing the College Township road at 70 poles and
156 Sewell's run at 125, and a branch at 290, 373½ poles to a stake in the northeasterly line of the original survey where a hickory 16 inches diameter bears N. 73 E. 24 links and a maple 20 inches diameter bears N. 80 W. 14 links; thence with the said line, correcting the course S. 36¾ E. 148½ poles, to two white oaks and a sugar tree easterly corner of said survey; thence with the southeasterly line thereof, correcting the course S. 51 39 W., crossing Sewell's run at 240 poles, and the College Township road at 276 poles, 377½ poles to the beginning; together with all and singular the premises thereunto belonging or in anywise appertaining; to have and to hold the said land conveyed, with all and singular the appurtenances, unto the said Aaron Oxley, his heirs forever. And the said Gerard McKinney and Elizabeth, his wife, ex'x, and John Boyce, executor, of Wm. Boyce, dec'd, for themselves, their heirs, executors, and administrators, the aforesaid tract of land and premises unto the Aaron Oxley, his heirs, and assigns, against the claim or claims of all and every person or persons whatsoever claiming under the said William Boyce or under the said Gerard McKinney and Elizabeth, executrix, and the said Jno. Boyce, ex'r, do and will warrant and forever defend by these presents.

In witness whereof, the said parties have hereunto set their hands and seals the day and date first above written.

GERARD McKINNEY and
ELIZABETH, his wife, *Executrix.* [SEAL.]
JOHN BOYCE, *Executor.* [SEAL.]

Witness:
WILLIAM HADLEY.
JAMES HARRIS.

157 STATE OF OHIO, *Clinton County, ss:*

Personally appeared before me, a justice of the peace in and for the county aforesaid, Gerard McKinney, for himself, and Elizabeth, his wife, executrix, and John Boyce, executor, of William Boyce, dec'd, and acknowledged the signature, sealing, and delivering the foregoing indenture, for the purposes mentioned.

Given under my hand and seal this 21st day of March, 1816.

JAMES HARRIS. [SEAL.]

No. 243. Rec'd for record 31st Dec., 1816. Recorded 3d Jan'y, 1817.
JAS. W. MAGEE, *R. C. C.*

RECORDER'S OFFICE, *Clinton County, ss:*

I do hereby certify that the foregoing instrument is a correct copy of a deed remaining on the land records in this office.

Witness my hand and seal official this 11th July, 1851.

[SEAL.] AMOS T. SEWELL, *R. C. C.*

158 This indenture, made this twenty-third day of March, in the year of our Lord one thousand eight hundred and sixteen, between Gerard McKinney and Elizabeth, his wife, executrix, and John Boyce, executor, of William Boyce, deceased, of the county of Fayette and State of Kentucky, of the one part, and Richard Cast, of the county of Clinton, in the State of Ohio, of the other part, witnesseth: That the said Gerard McKinney and Elizabeth, his wife, executrix, and John Boyce, executor, of William Boyce, dec'd, for and in consideration of the sum of nine hundred dollars, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents doth grant, bargain, sell and confirm, unto the said Richard Cast, his heirs and assigns, a tract or parcel of land situate and being in the county of Clinton, in the State of Ohio, on Todd's fork, being part of two military surveys, No. 2227 and No. 2245, agreeable to two patents to the said William Boyce, bearing date 5th April, 1802, and the other 24th March, 1802, containing three hundred acres; beginning at a supposed corner in the middle of Todd's fork, from whence a beech 20 inches diameter bears S. 37 E. 4 poles; thence S. 37, 37, E. 66 poles, to two sugar trees and ash; thence S. 36¾ E. 296½ poles to a stake where a hickory 16 inches diameter bears N. 73 E. 24 links, and a maple 20 inches diameter bears N. 80 W. 14 links; thence S. 53 W. 179 poles, 9 4-10 links to a stake where a gum 12 inches diameter bears N. 51 W. 22 links; thence
159 N. 36¾ W. 199 poles to the middle of Todd's fork; thence up the middle of the creek with the meanders thereof to the beginning; together with all and singular the premises thereunto belonging or in anywise appertaining; to have and to hold the said lands hereby conveyed, with all the appurtenances, unto the said Richard Cast, his heirs forever. And the said Gerard McKinney and Elizabeth, his wife, ex'x, and John Boyce, ex'r, of William Boyce, deceased, for themselves, their heirs, executors, and administrators, the aforesaid tract of land and premises unto the said Richard Cast, his heirs and assigns, against the claim or claims of all and every person or persons whatsoever claiming under the said William Boyce or under the said Gerard McKinney and Elizabeth, his wife, ex'x, and the said John Boyce, ex'r, do and will warrant and forever defend these presents.

In witness whereof, the said parties have hereunto set their hands and seals the day and date first above written

GERARD McKINNEY and
ELIZABETH, his wife, *Ex'x.* [SEAL.]
JOHN BOYCE, *Ex'r.* [SEAL.]

Witness:

_____ _____.
_____ _____.

STATE OF OHIO, *Clinton County, ss:*

Personally appeared before me, one of the acting justices of the peace in and for the county aforesaid, Gerard McKinney, for himself, and Elizabeth, his wife, executrix, and John Boyce, executor, of William Boyce, dec'd,

and acknowledged the signing, sealing, and delivering the foregoing deed, for the purposes therein specified.

Given under my hand and seal this 23d day of March, 1816.

JAMES HARRIS. [SEAL.]

No. 195. Rec'd for record 28th Sept., 1816. Recorded the 2nd October, 1816.

JAS. W. MAGEE, *R. C. C.*

RECORDER'S OFFICE, *Clinton County, O., ss:*

I do hereby certify that the foregoing instrument is a correct copy of a deed remaining on the land records for Clinton county, Ohio.

Witness my hand and official seal this 11th July, A. D. 1851.

[SEAL.]

AMOS T. SEWELL, *R. C. C.*

This indenture, made this twenty-third day of March, in the year of our Lord one thousand eight hundred and sixteen, between Gerard McKinney and Elizabeth, his wife, executrix, and John Boyce, executor, of Wm. Boyce, dec'd, of the one part, of the county of Fayette and State of Kentucky, and William Hadley, of the county of Clinton and State of Ohio, of the other part, witnesseth: That the said Gerard McKinney and Elizabeth, his wife, ex'x, and John Boyce, ex'r, of Wm. Boyce, dec'd, for and in consideration of the sum of one thousand nine hundred dollars, current money of the United States, to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents doth grant, bargain, sell and confirm, unto the said Wm. Hadley, his heirs and assigns, a tract or parcel of land situate and being in the county of Clinton, in the State of Ohio, on Todd's fork, being a part of two military surveys, No. 2227 and 2245, agreeable to two patents to the said Wm. Boyce, one bearing date 5th April, 1802, and the other 26th March, 1802, containing three hundred and seventy-eight acres and thirty-one poles; beginning at a supposed corner in the middle of Todd's fork, where a large forked sycamore on the south bank bears S. 32 E. 5 poles; thence S. 38 E. crossing the east fork 136½ poles to three sugar trees; thence S. 35° 38″ E. 265¾ poles to a stake where a white oak nine inches diameter bears N. 55° W. 9 links, and a sugar tree 4 in. diameter bears S. 69° E. 7 links, corner to Aaron Oxley; thence N. 53 E. 194 poles 16 links to a stake where a gum 12 in. diameter bears N. 53° E. 10 links, and a sugar tree 12 in. diameter bears N. 51° W. 22 links, in the line of Aaron Oxley, and corner to Richard Cast; thence with said Cast's line N. 36¾° W. 199 poles to the middle of Todd's fork; thence down the said creek with the meanders thereof to the beginning; together with all and singular the premises thereunto belonging or in anywise appertaining; to have and to hold the said land hereby conveyed, with all the appurtenances, unto the said Wm. Hadley, his heirs forever. [And the said Gerard McKinney and Elizabeth, his wife, ex'x, and John Boyce, ex'r, of Wm. Boyce, dec'd, for themselves, their heirs, executors and administrators, the aforesaid tract of land and premises unto the said William Hadley, his heirs and assigns, against claim or claims of all and every person or persons whatsoever claiming under the said Wm. Boyce, or under the said Gerard McKinney and Elizabeth, his wife, ex'x,

and the said John Boyce, ex'r, do and will warrant and forever defend by these presents.

In witness whereof, the said parties have hereunto set their hands and seals the day and date first above written.

GERARD McKINNEY and
ELIZABETH, his wife, *Ex'x.* [SEAL.]
JOHN BOYCE. *Ex'r.* [SEAL.]

Witness:
WILLIAM PYLE.
JAMES HARRIS.

163 STATE OF OHIO, *Clinton County, sct:*

Personally appeared before me, one of the acting justices of the peace in and for the county aforesaid, Gerard McKinney, for himself, and Elizabeth, his wife, executrix, and John Boyce, ex'r, of Wm. Boyce, dec'd, and acknowledged the signing, sealing, and delivering the foregoing deed, for the purposes therein specified.

Given under my hand and seal this 23rd day of March, 1816.

JAMES HARRIS. [SEAL.]

164 GENERAL LAND OFFICE, *August* 17, 1846.

SIR: In compliance with your request of the 8th instant, I herewith transmit you certified copies of Virginia military patents, issued in favor of William Boyce, on surveys 2227, 2245, and 2246, founded on warrant No. 3671.

These patents are the only ones found on the records in the name of said Boyce.

I am, very respectfully, your obedient servant,

JAMES H. PIPER, *Acting Commissioner.*

W. S. MICKLE, Esq.,
Lebanon, Warren county, Ohio.

165 GENERAL LAND OFFICE, *August 17th*, 1846.

I, James H. Piper, Acting Commissioner of the General Land Office, do hereby certify that the annexed true and literal exemplification.

In testimony whereof, I have hereunto subscribed my name and caused [L. S.] the seal of this office to be affixed, at the city of Washington, on the day and year above written.

JAS. H. PIPER,
Acting Commissioner General Land Office.

166 Thomas Jefferson, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that in consideration of military service performed by William Boyce, (a lieutenant,) to the United States, in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto," and two other acts of the said Congress respectively passed on the 9th day of June, in the year 1794, and on the 13th day of May, 1800, amendatory of the said act, there is granted by the said United States unto the said William Boyce a certain tract of land containing one hundred acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, as by survey bearing the eleventh day of March, in the year one thousand seven hundred and ninety-

three, and bounded and described as follows, to wit: Survey of one thousand acres of lands on part of a military warrant No. 3671, in favor of the said William Boyce, the whole thereof being for two thousand six hundred and sixty-six and two-thirds acres, on the east fork of Todd's creek, a branch of the Little Miami, beginning at two sugar trees, an ash, and hoop wood, south corner to Stephen T. Mason's survey No. 1507; running thence south thirty-seven degrees east four hundred poles, crossing a branch at one hundred and forty poles to two white oaks, a sugar tree; thence
167 south fifty-three degrees west four hundred poles, crossing the creek at two hundred and forty poles, to two hickories and a sugar tree; thence north thirty-seven degrees west four hundred poles to three sugar trees; thence north fifty-three degrees east, four hundred poles, crossing the creek at sixty poles, and a branch at three hundred and seventy poles to the beginning, with the appurtenances; to have and to hold the said tract of land, with the appurtenances, unto the said William Boyce and his heirs and assigns forever.

In witness whereof, the said Thomas Jefferson, President of the United States of America, hath caused the seal of the United States to be hereunto affixed, and signed the same with his hand, at the city of Washing-
[SEAL.] ton, the fifth day of April, in the year of our Lord one thousand eight hundred and two, and of the independence of the United States of America the twenty-sixth.

TH. JEFFERSON.

By the President:
JAMES MADISON, *Secretary of State.*

WAR OFFICE, *March 13th*, 1802.

William Boyce was originally entitled to the bounty land granted to him by the within patent.

H. DEARBORN, *Sec'y of War.*

168 GENERAL LAND OFFICE, *August* 17, 1846.

I, James H. Piper, Acting Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification from the records of this office.

In testimony whereof, I have hereunto subscribed my name and caused
[SEAL.] the seal of this office to be affixed, at the city of Washington, on the day and year above written.

JAMES H. PIPER,
Acting Commissioner of the General Land Office.

169 Thomas Jefferson, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that in consideration of military service performed by William Boyce, (a lieutenant,) to the United States, in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States, passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line on continental establishment, to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto," and two other acts of the said Congress, respectively passed on the 9th day of June, in the year 1794, and on the thirteenth day of May, 1800, amendatory of the said act, there is granted by the said United States unto the said William Boyce a certain tract of land containing six hundred sixty-six and two-thirds acres, situate between the Little Miami and Scioto rivers, northwest of the river Ohio, as by survey

bearing date the twelfth day of March, in the year one thousand seven hundred and ninety-three, and bounded and described as follows, to wit: Survey of six hundred sixty-six and two-thirds acres of land on part of a military warrant No. 3671, in favor of the said William Boyce, (the whole thereof being for two thousand six hundred sixty-six and two-thirds acres,) on the waters of Todd's fork, a branch of the Little Miami; beginning at two ashes, west corner to Thomas Banks's survey of seven hundred
170 and seventy-seven acres, in the line of Horatio Gates's survey No. 2230; thence with Gates's line south six degrees east three hundred and fifty-four poles, crossing a large branch at two hundred and seventy-four poles to two sugar trees and a hickory, corner to said Gates's survey No. 2230 and 1554; thence with the line of 1554 north eighty-four degrees east six hundred and two poles, passing the corner at four hundred poles to two sugar trees and an elm; thence north sixty-five degrees west seven hundred and four poles, crossing a branch to the beginning, with the appurtenances; to have and to hold the said tract of land, with the appurtenances, unto the said William Boyce and his heirs and assigns forever.

In witness whereof, the said Thomas Jefferson, President of the United States of America, hath caused the seal of the United States to be hereunto affixed, and signed the same with his hand, at the city of Washing-
[L. S.] ton, the fifth day of April, in the year of our Lord one thousand eight hundred and two, and of the independence of the United States of America the twenty-sixth.

TH. JEFFERSON.

By the President:
JAMES MADISON, *Secretary of State.*

WAR OFFICE, *March 13th*, 1802.

William Boyce was originally entitled to the bounty land granted to him by the within patent.

H. DEARBORN, *Sec'y of War.*

171 GENERAL LAND OFFICE, *August 17th*, 1846.

I, James H. Piper, Acting Commissioner of the General Land Office, do certify that the annexed is a true and literal exemplification from the records of this office.

In testimony whereof, I have hereunto subscribed my name and caused
[SEAL.] the seal of this office to be affixed, at the city of Washington, on the day and year above written.

JAMES H. PIPER,
Acting Commissioner of the General Land Office.

172 Thomas Jefferson, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that in consideration of military service performed by William Boyce, (a lieutenant,) to the United States, in the Virginia line on continental establishment, and in pursuance of an act of the Congress of the United States passed on the 10th day of August, in the year 1790, entitled "An act to enable the officers and soldiers of the Virginia line on continental establishment to obtain titles to certain lands lying northwest of the river Ohio, between the Little Miami and Scioto," and two other acts of the said Congress, respectively passed on the 9th day of June, in the year 1794, and on the thirteenth day of May, 1800, amendatory of the said act, there is granted by the said United States unto the said William Boyce a certain tract of land containing one thousand acres, situate between the Little Miami and

Scioto rivers, northwest of the river Ohio, as by survey bearing date the eleventh day of March, in the year seven hundred and ninety-three, and bounded and described as follows, to wit: Survey of one thousand acres of land on part of a military warrant No. 3671, in favor of the said William Boyce, (the whole thereof being for two thousand six hundred sixty-six and two-thirds acres,) on Todd's creek and east branch of the Little Miami;
173 beginning at three sugar trees, north corner to Stephen T. Mason's survey No. 1506, and west corner to William Boyce's survey No. 2227; thence north thirty-seven degrees west four hundred poles, crossing a large east fork at sixty poles, the creek at one hundred and forty poles, to a sugar tree and beech; thence north fifty-three degrees east four hundred poles to an ash, walnut, and elm; thence south thirty-seven degrees east four hundred poles, crossing the creek at three hundred and forty-six poles to two ashes, sugar tree, and hoop wood, corner to Boyce; thence with his line south fifty-three degrees west four hundred poles, crossing the east fork at three hundred and forty poles to the beginning, with the appurtenances; to have and to hold the said tract of land, with the appurtenances, unto the said William Boyce and his heirs and assigns forever.

In witness whereof, the said Thomas Jefferson, President of the United States of America, hath caused the seal of the United States to be hereunto affixed, and signed the same with his hand, at the city of Wash-
[L. S.] ington, the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and two, and of the independence of the United States of America the twenty-sixth.

TH. JEFFERSON.

By the President:
JAMES MADISON, *Secretary of State.*

WAR OFFICE, *March 13th*, 1802.

William Boyce was originally entitled to the bounty land to him granted by the within patent.

H. DEARBORN, *Secretary of War.*

174 Know all men by these presents, that we, John Hadley and Isaac Harvey, of the county of Clinton and State of Ohio, are held and firmly bound unto Gerard McKinney and Elizabeth, his wife, ex'x, and Jno. Boyce, ex'r, of Wm. Boyce, dec'd, of the county of Fayette and State of Kentucky, in the just and full sum of two thousand dollars, to be paid to the said Gerard McKinney and Elizabeth, his wife, ex'x, and John Boyce, ex'r, of Wm. Boyce, dec'd, their certain attorney, their heirs, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, jointly and severally, our joint and several heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this sixth day of November, 1813.

The condition of the above obligation is such, that if the above-bound John Hadey and Isaac Harvey do and shall well and truly pay, or cause to be paid, to the said Gerard McKinney and Elizabeth, his wife, ex'x, and John Boyce, ex'r, of William Boyce, deceased, their certain attorney, their heirs, executors, administrators, or assigns, the just sum of one thousand dollars on or before the first day of November ensuing, payable with interest from the date hereof, then the above obligation is to be void; else to remain in full force and virtue.

Witness:
ELI HARVEY.

175 Principal of the within..... $1,000 00
Interest from date until 1st day of Sept. is 9 mos. 25 days. 49 17

$1,049 17

176 In the name of God, amen: I, William Boyce, of the county of Fayette and State of Kentucky, being now in disposing mind and memory, do make and ordain this to be my last will and testament. I here note that my sons-in-law, Samuel Wilson, Blank Moody, and Thomas Wrenn, that married my daughters Betsy, Patsy, and Nancy, have already received cash and property to the full amount of what I intend them as their patrimony of my estate. I wish it clearly understood that the property and money alluded to as the patrimony received by Thomas Wrenn only includes such as was received prior to the sixth day of March, eighteen hundred and seven, (it being about the time of the commencement of my removal to this country,) and all that he has received since that date was as agent, and not as son-in-law, except two negroes, Hector and Jemmy, received July 13th, 1808. As my estate lies in various parts of the world, and of various descriptions of property, so that I cannot make equal distributions in my will among the rest of my children, who have as yet not received their patrimony, by pointing out to each their kinds of property, in order to do justice to them and my loving wife, I give and bequeath every part of my estate, of every kind whatever, to be equally divided (by sale or otherwise, as may seem best,) between my loving wife and
177 my children not heretofore named, and their heirs forever, having particular regard to the education of my children not as yet educated. I constitute, ordain, and appoint my loving wife, Elizabeth, my executrix, my sons John and William, and Thomas Wrenn, my son-in-law, the whole and sole executors of this my last will and testament. In case Thomas Wrenn should serve as an executor after all the business of my estate is settled, and upon his rendering a fair and just account of his proceedings, then it is my wish he should be amply compensated for his trouble.

Signed, sealed, and acknowledged this ninth day of December, in the year one thousand eight hundred and eleven.

WILL. BOYCE. [SEAL.]

Witness:
WM. SMITH.
STEPHEN SMITH.

FAYETTE COUNTY, *to wit, Feb'y court,* 1812.

This last will and testament of William Boyce, deceased, was produced in court, proved by the oaths of Wm. Smith and Stephen Smith, the two subscribing witnesses thereto, and ordered to be recorded.

Att.: JOHN D. YOUNG, *Clk.*

COMMONWEALTH OF KENTUCKY, *Fayette County, sct:*

I, James A. Grimstead, clerk of the county court for the county
178 aforesaid, do certify that the foregoing will of William Boyce and certificate of proof of same are truly and accurately transcribed from the records of the same in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Lexington, this 30th day of July, 1846, and in
[SEAL.] the 55 year of the Commonwealth.

Att.: JAMES A. GRIMSTEAD, *C. F. C. C.*

COMMONWEALTH OF KENTUCKY, *Fayette County, sct:*

I, James L. Hickman, presiding justice of the county court in and for the county aforesaid, do certify that James A. Grimstead, whose name is signed to the above certificate, is, and was at the date of his said certificate, the clerk of the said court, duly appointed and qualified according to law, and that his said certificate is in due form of law, and his said signature is genuine.

Given under my hand this 30th day of July, 1846.

JAMES L. HICKMAN, *P. J. F. C. C.*

179 UNITED STATES OF AMERICA, *Southern District of Ohio:*

I, Joseph H. Geiger, clerk of the circuit court of the United States within and for the seventh circuit and southern district of Ohio, do hereby certify that the foregoing is truly taken and copied from the documentary evidence used in the trial of the case of John Hadley and William Pyle, for themselves and others, *vs.* William Boyce and others, and on file in this office.

In testimony whereof, I hereunto subscribed my name and affixed the [L. S.] seal of said court, at Cincinnati, this 26th day of October, A. D. 1863.

JOS. H. GEIGER, *Clerk.*

180 UNITED STATES OF AMERICA, *Southern Dis't of Ohio:*

I, Joseph H. Geiger, clerk circuit court of the United States within and for the seventh circuit and southern district of Ohio, do hereby certify that the foregoing is a true and complete transcript of the record and copy of all the evidence used in the cause of John Hadley and William Pyle, for themselves and others, complainants, against William Boyce and others, respondents, lately pending in this court and appealed by the respondents to the Supreme Court of the United States, as will appear from said record.

In testimony whereof, I do hereto subscribe my name and affix [L. S.] the seal of said court this 29th day of October, A. D. 1863.

JOS. H. GEIGER, *Clerk.*

Supreme Court of the United States.

[No. 79.]

DECEMBER TERM, A. D. 1865.

BOYCE, DUNLAP, ET AL., APPELLANTS,
vs.
HADLEY, PYLE, ET AL., APPELLEES.
} IN CHANCERY.

ARGUMENT FOR APPELLANTS.

DURBIN WARD,
Of Counsel for Appellants.

McGill & Witthrow, Printers & Stereotypers, Washington, D.C.

Supreme Court of the United States.

[No. 79.]

DECEMBER TERM, A. D. 1865.

BOYCE, DUNLAP, ET AL., APPELLANTS,
vs.
HADLEY, PYLE, ET AL., APPELLEES.
} IN CHANCERY.

ARGUMENT FOR APPELLANTS.

FACTS.

William Boyce, of Fayette county, Kentucky, was the patentee of the United States of 2666⅔ acres of land, lying in Clinton county, Ohio. Boyce, still owning these lands, made his will December 9, 1811, and died January 16, 1812. The will was admitted to probate at February term, 1812, in Fayette county, Kentucky, where Boyce died. The will appointed his widow, Elizabeth, and his sons, John and William, and his son-in-law, Thomas Wrenn, his executors. Subsequently to the admission of the will to probate, a part of the executors were qualified as such, viz.: Elizabeth Boyce, who gave bond and took the oath at the August term, 1812, as required by the statute of Kentucky; afterwards, at ——, 18——, John Boyce took the oath and gave

the required bond. Thomas Wrenn and William Boyce, the two other executors, never took the oath or gave bond. After her qualification as executrix, Elizabeth Boyce, the widow, intermarried with Gerard McKinney. Subsequently, without any order of court, Gerard McKinney and John Boyce went to Ohio and sold and conveyed these lands to those under whom the appellees now claim title. These sales and conveyances all took place at divers dates from November 16, 1813, to March 23, 1816. The deeds were executed in Ohio by John Boyce and Gerard McKinney, the latter signing thus: "Gerard McKinney and Elizabeth his wife, Executrix, [seal.]" Mrs. McKinney was never in Ohio and never signed or executed any contract or deed for the sale or conveyance of these lands. The proceeds of the sales were carried by the executors into the assets of the estate, and when it was settled, October term 1824, the heirs and legatees of Wm. Boyce, without knowing anything of these transactions, except that certain lands in Ohio had been sold, received their respective shares of their father's estate, the proceeds of these lands included. The grantees took possession under these sales and deeds, and made valuable improvements.

There were seven legatees under the will: Elizabeth, the widow, and six children, of whom none but John were ever in Ohio. All the children but John were minors during these transactions; William, the eldest, arriving at full age May 5, 1817.

On the 3d of October, 1846, the present appellants, the heirs and devisees of William Boyce deceased, brought actions of ejectment in the Circuit Court of the United States for the District of Ohio, against the appellees, to recover these lands; and recovered judgment October 21, 1851, in that court, Judge McLean presiding. On this judgment they were about to issue execution when the appellees filed the original bill in this cause in the Court of Common Pleas for Clinton county, Ohio, August 2, 1852. The object and prayer of the bill were to enjoin the judgment in eject-

ment, and compel the present appellants to convey to the present appellees the *legal* title to the lands in question. A motion was then made by the appellants under the 12th section of the judiciary act of 1789, to certify the cause to the Circuit Court of the United States, which motion was overruled and afterwards lost from the files. The cause was heard on its merits, in the Common Pleas court, and the decision being against them, was appealed, by the present appellants, to the District Court of Ohio for Clinton county, in which court the appellants again filed their motion to certify, and the District Court reserved the motion to the Supreme Court of the State. By that court the cause was certified for decision to the Circuit Court of the United States for the southern district of Ohio.

It appears from the Record (p. 1) that the papers were filed in the circuit court March 10, 1860. At the October term, 1860, (Record, p. 2) an entry was made by the consent of both parties by which all the papers filed in the State courts are to be "as valid, for all purposes," as if filed in the circuit court after the cause had been certified thereto. It also appears by the Record (p. 25) that, by consent of both parties, the papers in the ejectment suit may be used in evidence in this cause.

Points of Pleading.

The original bill goes upon the theory that the *legal title* rests in the heirs and devisees of Boyce; and though it *incidentally* claims the benefit of the statute of limitations, (Record, p. 7,) still the whole frame of the bill is to procure the aid of the chancellor to perfect an inchoate *equitable* title—not to assert a perfect *legal* one. It prays for a specific execution of an executory contract for a conveyance "that the execution of the power of sale in the will may be perfected;" and that the judgment in ejectment may be enjoined, and the occupants quieted in their possession. The amended bill, however, is in effect, a *plea* of the statute of limitations. It claims, in direct language, that the *legal* title

is in the appellees, and yet asks the chancellor—not a court of law—to protect them in their legal estate. Defeated in their *plea* of the statute in a court of law, they now plead it as an amended *bill* in a court of chancery. We submit that this cannot be done. But not content to rest on either ground, the appellees ask the Court to decide which is the correct view of their case, and having thus pleaded for them, to apply the appropriate relief, legal or equitable as the case may turn out to be in its nature—an action at law or a bill in equity. (Record, pp. 23–4.) To all these incongruities, the appellants ask in their answer and amended answer the benefit of a demurrer. (Record, pp. 14, 26.)

But, without stopping to do more than suggest and insist —not argue—that the pleadings are, in this respect, as well as in respect to parties, multifarious, we claim that the only questions which can either give jurisdiction to, or be decided in, a court sitting in chancery, are questions of equitable cognizance, and not matters which can be as well tried in a court of law.

Law of the Case.

I. *The Judgments in Ejectment.*

In approaching the merits of the case, the first point is, whether the questions necessarily arising in the actions in ejectment are to be treated as *res adjudicatæ* in this suit. And we claim that they are. A judgment in ejectment does not bar another *legal* action to recover possession. In form the parties are nominal and fictitious. And so, as any other nominal and fictitious parties may sue again in the same form, the judgment is not conclusive. But if a judgment in ejectment be attacked *collaterally*, we see no reason why it should be held less conclusive than any other judgment. (*Miles vs. Caldwell*, 2 Wallace, 39.) Is it not a conclusive judgment as to costs? Could not perjury be predicated upon false swearing by a witness, on the trial of such an action? John Den may sue, though John Doe was defeated. But when another form of contesting the legal

title is adopted, it is not logical to allow an advantage to be taken, which belongs only to the fictitious forms of proceeding, and which is allowed only because they are fictitious. We maintain then that whatever is judicially decided in an action of ejectment, cannot be litigated again where the parties are real and not fictitious, and where the proceedings are in their nature collateral. Three questions were necessarily involved, and all of them tried and judicially determined in the actions of ejectment: 1. Does the will confer the power to sell? 2. Was that power executed? 3. Were the plaintiffs in ejectment barred by the statute of limitations? All these questions had to be decided in their favor, before the plaintiffs in ejectment could obtain judgment. These judgments then were conclusive upon these points, as to the actual parties to the suits—the present appellants and appellees,—though not as to the fictitious parties—the Does and Roes. If this view be correct, there is nothing open to judicial investigation in this case, except the equitable allegations of acquiescence in the sales, and the receipt of the purchase money. But the full discussion of the effect of this judgment is left to the senior counsel for the appellants.

II. Power to sell.

1. We shall discuss the power to sell, and the due execution of that power, together.

This will has already passed under the scrutinizing inspection of the Circuit Court, and it was there decided that it did not confer the power to sell on the executors. (5 McLean's Rep., 322.) We think the reasoning of the Court in that case was clear, forcible, and unanswerable.

If, however, it be considered that the point is open to examination again, we hold that an inspection of the will clearly shows that it confers on the executors no power to sell. It will hardly be claimed that it does so expressly. Let us see whether such a power is a just implication from its language. It recites that a part of the heirs of Boyce

had already received their portion by way of advancement, and then says: "As my estate lies in various parts of the world, and of various discriptions of property, so that I cannot make equal distributions in my will among the rest of my children, who have as yet not received their patrimony, by pointing out to each their kinds of property, in order to do equal justice to them and my loving wife, I give and bequeath every part of my estate, of every kind whatsoever, to be equally divided, by sale or otherwise, as may seem best, between my loving wife and my children not heretofore named, and their heirs forever, having particular regard to the education of my children not as yet educated." And then appoints executors, thus: "I constitute, ordain, and appoint, my loving wife Elizabeth my executrix, my sons John and William, and Thomas Wrenn, my son-in-law, the whole and sole executors of this my last will and testament."

Now from this language it is apparent: 1st. That the will was only made at all because the testator, having made advancements as to some of his heirs, wished to make the rest equal participants of his bounty; 2d. Because he could not, from the nature of the property, make a fair division himself before his death; and 3d. Because he wished those of his children not yet educated, to be educated out of the property before the equal division spoken of should be made between the devisees. In relation to no one of these objects is any duty imposed on the executors. The devise is not *to* the executors; they are not directed to sell, nor required to divide the property; they are not directed to divide the proceeds; they are not directed to educate the children; they are not made testamentary guardians of the children, nor is the property directed to be sold or divided subject to their discretion. On the contrary, the inference is irresistible, that the devise is to the devisees directly, and not to any one in trust for them. The property is simply to be divided between the wife and children "and their heirs forever." We maintain that the *title* passed to the devisees "and their heirs," and not to the executors; and consequently that the discretion to divide

without sale, or to sell, rested not with the executors, but with the devisees, or those under whose legal guardianship they were. We think this view is borne out by well-established legal and equitable principles.

"It has been a subject of some discussion in what cases executors take a fee simple in trust to sell under a will, or are invested merely with the power of disposition. The distinction from the authorities seems to be this: that a devise of the land *to executors to sell*, passes the interest in it; but a devise that *executors shall sell the land*, or that the land shall be sold by the executors, gives them but a power. An eminent writer has concluded, from an examination of all the cases, that even a devise of land *to be sold by executors*, without giving the estate to them, will invest them with a power only, and not give them an interest. It sometimes happens that a testator directs his estate to be disposed of for certain purposes, without declaring by whom the sale shall be made. In the absence of such declaration, *if the proceeds be distributable* by the executor, he shall have the property by implication." (1 Williams on Exec., 550; 1 Sug. Pow. 134; 1 Hill on Trustees, 471 and note 1.)

"The earlier cases established the distinction that a devise of land to executors to sell passed the interest in it; but a devise that executors *shall sell*, or that the land shall *be sold* by them, gives them but a power." (4 Kent's Com., 320.)

"It not unfrequently happens that a testator merely gives the trustees a *power* of disposing of the estate, without making any express devise to them. In this case, it is clear that the trustees will not take the legal estate, although the exercise of the power may be imperative; but the legal estate will descend to and remain vested in the heir of the testator until divested by the execution of the power." (Hill on Trustees, 235–6 and notes.)

"A devise of the land to an executor to sell passes the interest; but a devise that executors shall sell the land, or that lands shall be sold by the executors, gives them but a power." (1 Sug. on Powers, 131.) (2 Spence Eq. Jur., 365.)

The whole current of authorities is unbroken to the same effect. It is clear, therefore, that the *fee did not pass* to these executors, but vested in the devisees on the decease of the testator.

2. All the executors could take would be but a *power* to sell or divide the land. We admit that if there were anything in the will expressly imposing on *them* the duty to sell or divide, they might have exercised the power. If they were directed to pay debts, or to educate the children, this direction might raise the power of sale by implication. But no such direction is given them, nor are they invested with any discretion concerning these lands or the education of the children. (Knaker *vs.* Banbury, 6 Bing. N. C., 306.)

"A naked power, without an interest, given to several persons, does not survive, and it was a rule of the common law, that if the testator, by his will, directed his executors (by name) to sell, and one of them died, the others could not sell, because the words of the testator could not be satisfied." (4 Kent's Com., 325.)

This was altered by the Eng. st. 21 Henry VIII, ch. 4, (4 Eng. St. at Large, 166,) by which it was provided that such as qualified might convey.

As to trustees in general, the rule of the law is, that a naked power, not coupled with an interest, terminates with the death of the donee of the power and does not survive. (Coke Litt., 112 b., 113 a., 181 b.; Shep. Touch. pl. 9, page 429; Powell on Div., 292, 310; 14 John. Rep. 553; 1 Sug. on Powers, 144.)

And perhaps it may be assumed, as the *weight* of authority in this country, that where a will directs executors to sell lands, the power survives, if they are to distribute the proceeds, but not otherwise. (Peters *vs.* Beverly, 10 Peters, 532; Peters *vs.* Beverly, 1 Howard 134; Davore *vs.* Hening, 2 John. Chan., 254; Osgood *vs.* Franklin, 4 John. R., 553; Osgood *vs.* Franklin, 2 John. Ch. R., 17; Jackson *vs.*

Ferris, 15 John. R., 346; Taylor *vs.* Galloway, 1 Ohio, 232; 2 Williams on Ex., 817; 4 Kent. Com., 324; Robertson *vs.* Gaines, 2 Hemp., 367; Haskell *vs.* Hause, 3 Brevard, 242; 2 Stor. Eq. Jur., 1062.)

3. But still the question remains: If more than one should qualify, and then, while both are in full life and being, *one* should convey, does the power survive, so that this defective execution, or rather this *non* execution of the power could be aided in a court of equity?

Where only a power to sell is given, but no title, both executors must join, and a conveyance by one is void. (Halbert *vs.* Grant, 4 Monroe, 582; Floyd *vs.* Johnson, 2 Litt. Rep., 109; McRea *vs.* Farrow, 4 Hen. and Mumf., 444; Heron *vs.* Hoffner, 3 Rawle, 393; Herlett *vs.* Van Buren, 6 Ed. Ch., 20.)

And it is well settled, that if there be a trust, then the power survives. Kent says, (4 Com., 326): "If the executors, having the power to sell, are vested with any interest, legal or equitable, in the estate, or are charged with a trust relative to the estate and depending on the power to sell, in these cases also the power survives."

In Ohio, where a devise that executors do sell is made, it gives them a power to sell, and if they distribute the proceeds, that power is coupled with an interest. The legal title descends to the heirs, subject to be divested by the execution of the power. (Dabney *vs.* Manning, 3 Ohio, 325.)

In Berger *et al. vs.* Duff, 4 John. Chan., 369 Chancellor Kent says: "The executors cannot sell by attorney. The power given them by the will was a personal trust, to be exercised by them jointly, according to their judgment; for the will directed them to sell, if the imperious circumstances of the times, or the extreme hazard of depreciation in value of the property, should in their best judgment render it prudent."

"Whenever a power is given, if a personal confidence and trust be thereby reposed in the donee to exercise his own judgment and discretion, he cannot refer the power to the execution of another; *for delegatus non potest delegare.*" Therefore, where a power of sale is given to executors, they cannot sell by attorney." (Pearson *vs.* Jamison, 1 McLean, 197; 2 Williams on Ex., 807; 1 Sug. on Powers, (3d Am. Ed.,) p. 213; Taylor *et al. vs.* Galloway, 1 Ohio, 232; Wills *vs.* Cowper, 2 Ohio, 124.)

Where there is a devise to trustees, to sell to certain uses, and afterwards in the will the same persons are appointed executors, they sell as trustees and not as executors. (Denn *vs.* Judge, 11 East, 288; 1 Williams on Ex., 550; Hill on Trustees, 238.

"Where the will gives no direction to sell, but refers the power to sell to the judgment and discretion of the executors, all must join in the sale." (4 Kent Com., 325-6; 4 Green's Devisees, 133, 148, and notes; Cole *vs.* Wade, 16 Ves., 27; Walter *vs.* Murde, 19 Ves., 424; Noel *vs.* Harvey, 29 Mississippi, 72.)

To the same point, see Wassan *vs.* King, 2 Dev. and Bat., 262; 2 Dev. and Bat., 439; Dev. and Bat. Eq. Cases, 496; Clay *vs.* Hart, 7 Dana, 8; 2 Sandf., (L. R.,) 512; Drayton *vs.* Drayton, 2 DeSaus., 250; 8 Burr, 417; 30 Maine, 523; 1 Comst., 341; 1 Seld., 136.

This is we think a fair abstract of the general drift of the authorities upon this subject. And although there seems at first view, to be some confusion and conflict, yet when considered more carefully the leading principles of this branch of the law may be easily deduced.

4. It was the general principle of the old English law, that where several by name were created trustees, relating to a matter of private interest, and not of public concern, all must join in the execution of the trust. If they did not,

their acts were void. Although executors derived their power over the real estate of the testator in general from the Statute of Wills, yet as they were in a sense trustees, this common law rule would apply to them too, except as altered by statute. This was done in England, and has doubtless been done in many of our States. It is the general rule that a power coupled with an interest survives, and where it survives it may be executed by one of several. It survives also where the power is conferred on an office, or a relation, one holds; as if it be conferred on *trustees, executors, sons*, and so forth, and not on persons "*nominatim.*" Where the power is conferred on "*persons*" *by name*, they alone can execute and must all join, for they are held to be the recipients of a personal confidence which cannot be devolved on another. Where certain persons are named as executors, and the power is conferred on them, *as such*, the question is more difficult. But the rule is, that where they are required to exercise judgment and discretion, then there is a personal confidence, which requires all to consult and act, and the act of one alone is void. Nor does the power survive. Where executors having a power coupled with an interest do not all qualify, but some renounce, and the rest execute the power, though there is conflict in the decisions, the rule may perhaps be safely taken to be that the execution is valid. But where a part only of those who take upon them the discharge of the trust, join in the execution of the power, the others being in full life and being, such execution is not valid, and much more is this the rule where the exetion of the power requires the exercise of judgment and discretion.

5. This brings us to the question how far courts of equity will aid the execution of a power, and what constitutes a defective execution, and what is a non-execution of a power.

That a court of equity will as a general proposition aid the defective execution of a power, is of course well settled;

but it will not relieve against a want of execution, or aid a void execution. (4 Kent's Com., 339; 1 St. Eq., J., 169, 170, 171, and notes; 2 Sug. on Powers, 89, 93, 158, 177; Tollet *vs.* Tollet, 2 P. W., 489; 1 White and Tudor's L. C. in Eq., 155; Teaman *vs.* Beam, *et. al.*, 2 Ohio, 383.)

What is a defective execution?

"It may be laid down as a general rule, that where the intention to execute a power is sufficiently declared, but the act declaring the intention is not an execution of the power in the form prescribed, then the defect shall be supplied in equity." (W. and T. Lead. Cases, 161; Barr *vs.* Hatch, *et. al.*, 3 Ohio, 527.)

"But equity will not aid a defective execution of a power, if the intention of the author of the power would be thereby defeated." (*Ib.*, 163; Lord Eldon, in Reid *vs.* Shengold, 10 Ves., p. 370; 2 Sug. on Powers, 128.)

And so in Cockerell *vs.* Cholmesby, 1 Russ. and Myl, 424. And the case was affirmed in the House of Lords. And see 1 Story's Eq. Jur., §§§ 171–'2–'3.

6. But when one of several executors or trustees executes the power, is this a case of defective execution or is it non-execution?

"Where the power exists independent of its mode of execution, and has been defectively executed, it is not a case of want of power, but of defective execution, which a court of equity will aid. But where the power and mode of execution are inseparable, the power resulting from the mode, and that mode has not been pursued, it is not a case of defective execution, but of want of power, which a court of equity cannot aid." (Reed, in Silliman *vs.* Cummins, 13 Ohio, 119.)

"In all these cases it is to be understood that the intention and objects of the power are not defeated or put aside; that they are only attempted by the party to be carried informally into effect. But where there is a defect of substance in the execution of the power, such as the want of co-operation of all the proper parties in the act, there equity will not aid the defect. (1 Sto. Eq., 175, and cited by Story,

2 Chance on Powers, ch. 23, sec. 2, pages 540 to 543; Com. Dig. Chancery, 426–'7.)

On the same subject see White and T. L. Cases in Eq., top p. 218, side p. 166; Roberts' widow and heirs *vs.* Stanton, 2 Mumford, 129, 139; Thorp, *et. al.*, *vs.* McCullan, *et. al.*, 1 Gilman, 615, 629; 7 Vesey, 506, 12.

In a late case in Illinois, (Clinefelter *vs.* Ayres, 16 Ill., Rep. 329,) Judge Skates delivers a very able opinion, in which the whole subject is discussed, and the court held that one executor could not convey when others were living, who had also been named as executors, though they had never qualified. And in the case never alludes to its being a case of defective execution of a power. Indeed, in no case, English or American, have we found an intimation that a "*defective execution*" extends to the failure of one to execute, who is by law required to do so, except in the case in Mumford and Gillman above cited, and there they are *only* intimations. *This is no such decision.*

On correct principle this question goes back again to the construction and nature of powers. Where the power is such that one of several, the others never having qualified, or being dead or otherwise disabled, may execute the power, then his execution if in due form is valid, and needs no aid from a court of equity to perfect its operation. Where the power is one connected with a *personal* trust or confidence, requiring the personal judgment and discretion of the donees of the power; then in order to make an appointment valid all must join. The act of one is a nullity. The power results from the mode of its execution, and does not exist independent thereof. The court cannot cure it, for it is a case of *non*-execution, not defective execution.

In such a case, the testator or donor, has taken pains to provide for the services of specific individuals in whom he has confidence, and no court can compel the exercise of their discretion. But it would be doing so in effect, if the act of

one of several could be made by decree to operate as the act of all.

No case can be found in the books where there were two or more donees of a power, having vested in them a *personal discretion* as to its execution, and all living and qualified to act, in which an appointment by one was aided as a *defective execution.*

7. In conclusion on this point:

We claim 1st, That the will gives the *legal title and estate* to the devisees and not to the executors. 2nd. That it confers on the executors no *power* to sell or divide, because they are not required to sell or divide; not required to distribute the proceeds; not required to educate the children; and are not charged with any *personal* confidence or discretion concerning these lands, or their proceeds, or concerning the children. An executor, merely as such, does not take either the *title* or the *estate*, unless it is specially conferred, nor does he take any *power* over it. Nor does he become the guardian of the children. To have control of any of these things they must be either conferred *expressly*, or by an unmistakeable *implication.* 3d. We claim that if such power does exist, it must be either coupled with an interest, or otherwise; if coupled with an interest, it cannot be so, except by being at the same time a *personal* trust and conconfidence; if not coupled with an interest, it does not *survive* to one of several; and in either case a conveyance by *one* of several is absolutely void. 4th. If, therefore, the power does exist, it has never been executed by those charged with it, and its pretended execution by a part of them is a *non-execution*, not a mere *defective* execution, and so cannot be aided by a court of chancery. 5th. Where a personal trust and confidence is given to several, the act of *one is void*, because the very object of appointing several is that they shall advise, and consult, and act together.

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III. AFFIRMANCE OF THE SALES.

It is claimed that the defendants are estopped by having affirmed these sales. And this is the only ground of equitable relief not adjudged by the case in 5 McLean, 322, in the ejectment. If our position is correct, that the will conferred on the executors no *power* to sell, then the sales are *void*, and there is nothing to affirm. What is *voidable* merely may be affirmed, what is absolutely *void* cannot be.

The law as much requires capacity to affirm a contract, as it requires capacity to make one. Whatever incapacitates a party for the one incapacitates him for the other. Infants and married women can no more ratify than make contracts.

Most of the devisees of Boyce were infants at the time of these sales, and four of them were married women. *They at least could not affirm.*

1. *As to the married women:* The authorites are numerous and uniform, that they were not bound, and could not while under coverture affirm. (See Martin *vs.* Dudley, 6 Wend., 9; Green *vs.* Branton, Dev. Eq. Rep,, 500; 2 Green's Chan., 65; Palmer *vs.* Crop, S. and Marsh, 48; Providence *vs.* Manchester, 5 Mason, 59; 3 Greenleaf, 51.)

And so in Ohio. (McFarland *vs.* Febiger, 7 Ohio, 194; Cass *vs.* Williams, 10 Ohio, 507; Purcell *vs.* Goshorn, 17 Ohio, 105.)

But the most conclusive case in Ohio, is Drake *vs.* Ramsey, 5 Ohio, 251. It applies to infancy as well as coverture.

2. *As to the infants:* The contracts of infants are only *voidable.* And yet disputes have existed whether they were valid until *disaffirmed*, or invalid unless *affirmed.* This perhaps is a distinction without a difference, unless the difference is found in acquiescence; this may constitute affirmance, and a disaffirmance would not be allowed afterwards to avoid the contract. A

direct act of affirmance may not therefore be required, but some act of disaffirmance will be, or the contract finally becomes valid by *acquiescence*. It cannot be claimed in this case that any direct affirmance ever took place. Acquiescence alone can be relied upon. Now an infant is incapable in law of acquiescing in, or affirming a transaction. (Drake *vs.* Ramsey, 5 Ohio, 251.)

Can acquiescence, after he attains full age, for a period short of the statutory limitation, bar an infant's right to disapprove a contract? We think it cannot, where there is no direct act of affirmance.

The general subject of the avoiding of their *deeds* by infants, after they have attained full age, is well discussed in Cresenger *vs.* Welsh, 15 Ohio Rep., 156, and Tucker *vs.* Moreland, 10 Peters, 65.

These cases were where infants had conveyed their real estate and received the purchase money, and were afterwards allowed by deed to disaffirm without returning the consideration. (See, to the same point, 11 Serg't. Rawle, 311; Hoile *vs.* Stone, 2 Dev. & Bat., 320; Jackson *vs.* Carpenter, 11 Johnson, 539; Jackson *vs.* Burchan, 14 John R., 124; Wheaton *vs.* East., 5 Yerger, 7 Blackf., 442; 23 Maine, 523.) Bringing a suit is a disaffirmance. (Hughes *vs.* Adams, 10 Ohio, 127; Clamorgan *vs.* Lane, 9 Missouri, 446.)

Parsons, in his valuable work on contracts, vol. 1, p. 274, in a note, after a full review of all the cases, says: "*Upon the whole it may be said, that an infant's conveyances are not ratified by a bare recognition of the existence of, or a silent acquiescence in, his deed for any period less than the period of statutory limitation.*"

It is but fair, however, to state, that he says, page 269, that where an infant disaffirms, he must return the purchase money; and cites, in support of the proposition, a number of New England authorities, and Hillyer *vs.* Rennett, 3 Edwards Ch., 222. We think the doctrine, as stated, is open to doubt; but it is at all events totally inapplicable to a case

like the present. For here the infant made no contract—and so on disaffirffiing the contract of another, is not bound to return the purchase money. As to contracts of infants generally, see Chitty on Cont's, 153; 2 Kent's Com., 237.

But without discussing it further, the ratification, to be good, must have been with a knowledge of all the circumstances of the transaction and an understanding of his rights by the infant at the time of the ratification. No such thing exists in this case.

There is no act of ratification, unless receiving the purchase money be one. And certainly this is not, inasmuch as it was done in total ignorance of their rights and of all the transactions attending these sales. A mere silence, a neglect to assert rights of whose existence they were ignorant, is all the acquiescence that can be alleged against the devisees of Boyce. And an acquiescence which will bar rights must, at least, be one which is accompanied by a full knowledge of the facts.

IV. Statute of Limitations.

1. The limitation of action is purely the creature of the statute. (Ang. on Limitations, 11, 14; Williams *vs.* Jones, 13 East Rep., 44.) But all nations except the Jews have had, in some form, title by *prescription*, and have ordained periods of limitation to actions. As to lands, it has varied from three generations as among the Hindoos, or sixty years as by the old English writ of right, to two years as by the Twelve Tables of Rome. The period has always been fixed in Ohio, since such statutes had existence, at twenty-one years, except from 1804 to 1810, when it was fixed at twenty years. But in all these statutes in Ohio there have been *savings* in favor of persons under certain disabilities. And it is under one of these savings that the appellants now claim title. Their rights accrued on the 23d of March, 1816, and from that day to this they have all been continuously under the disability of "beyond seas," as an examination of the statutes will conclusively show.

2. It is not clear that there was any *valid* statute of limitations in Ohio until the passage of the act of 1804. (See Chase's Statutes, 102, 151, 392.)

This act, section 5, provides, "that all causes of action enumerated in this act, which have already accrued, shall only be barred by counting the time of limitation given to those actions respectively from the passage of this law." And the next section repeals "all acts and parts of acts coming within the purview of this act," without saving; thus by implication seeming to recognize the invalidity of all previous acts. From this point then the history of the limitation of actions in Ohio begins. (Chase, 392.)

Section 2 provides: "That no person or persons shall hereafter sue, have or maintain any writ of ejectment or other action for the recovery of the possession, title or claim of, to or for any lands, tenements or other hereditaments, but within twenty years, next after the right of such actions or suits shall have accrued.

"Sec. 3. *Provided, always*, That if any person or persons who is or shall be entitled to have, sue or bring any such action or actions as aforesaid, shall be within the age of twenty-one years, insane, *feme covert*, imprisoned or beyond sea, at the time when any such action or actions may or shall accrue, then every such person or persons shall have a right to have, sue or bring any of the action or actions aforesaid, within the times hereby before limited in this act, after such disability shall have been removed."

The act of Jan. 24, 1809, (Chase, 620,) merely provides for an extension of time in case a party quits the country or secretes himself, and for renewing an action in case of defeat by reason of any preliminary mistake.

Both these acts of 1804 and 1809 are repealed by the act of June 25, 1810, (Chase, 655,) but as to ejectments are substantially re-enacted.

Section 2, provides "That no person or persons shall hereafter sue, have or maintain any writ of ejectment, or

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other action for the recovery of the possession, title or claim of, to or for any land, tenements or hereditaments, but within twenty-one years next after the right of such action or suit shall have accrued: *Provided*, That if any person or persons, who are, or shall be, entitled to have, sue or bring any suits, action or actions, as aforesaid, shall be within the age of twenty-one years, insane, *feme coverts*, imprisoned, or beyond sea at the time when any suits, action or actions, may or shall have accrued, then any such person or persons, shall have a right to have, sue, or bring any action or actions aforesaid, within the time hereinbefore mentioned in this act, after such disability shall have been removed." * *

Sec. 3. That if in any action or suit commenced within the time limited by this act judgment be arrested or reversed, and the time limited as aforesaid expires, the plaintiff may bring a new action: *Provided*, He do it within one year after such judgment has been arrested or reversed."

By the 5th section it is enacted

"That all causes of action enumerated in this act which accrued before the passage of an act entitled "An act for the limitation of actions," passed the 4th day of January, eighteen hundred and four, shall only be barred by the provisions thereof, as well as those causes of action which have accrued since the passage of the act aforesaid, and before the passage of this law." (Chase, 656.)

Thus all causes of action of every character which had *accrued* before the passage of the act of 1810 were limited by the act of 1804, provided they were *enumerated* in the act of 1810; but if not enumerated, they were not barred at all by any statute.

The act of 1810 was repealed by the act of February 25, 1824, (Chase, 1402,) with an ambiguous saving contained in section 5.

The first section provides "That all actions hereinafter mentioned shall be commenced within the several times hereinafter limited, after the cause of such action shall have

accrued, and not after. First. Actions of ejectment or other actions for the recovery of the title or possession of lands, tenements, or hereditaments, within twenty-one years: *Provided*, That actions for 'forcible entry and detainer,' &c., be brought within two years." * * *

Sec. 2, enacts "That if any person who shall be entitled to have or commence any action of ejectment for the recovery of the title or possession of lands, tenements or hereditaments, shall be within the age of twenty-one years, insane, *feme covert*, or without the United States and territories thereof, at the time such cause of action shall have accrued, and if any person who shall be entitled to institute any other action limited by this act, shall be within age as aforesaid, *feme covert*, imprisoned, or without this State at the time such cause of action accrued, every such person shall have a right to commence any such action within the time hereinbefore limited, after such disability shall be removed."

The third and fourth sections provide, that a suit going off on any preliminary point may be renewed within a year; and also that the statute shall not run where the defendant is out of the State or secretes himself.

The 5th section is peculiar, and reads thus:

"That the act entitled 'An act for the limitation of actions,' passed January twenty-fifth, one thousand eight hundred and ten, be, and the same is hereby repealed: *Provided*, That nothing in this act shall be construed to extend to any action or cause of action which may have been heretofore barred by any statutes of limitation; and all such actions and causes of action shall be adjudged and decided under the statutes by which they have respectively been barred. This act shall take effect and be in force from and after the 1st day of June next."

Although this is obscure, the fair inference is that it was intended to be merely a saving of all causes of action which had accrued under previous acts, and a recognition of the general principle running through all the legislation on the subject, that for the purpose of limiting such actions, the old statutes were still in force, though repealed as to all

rights of action accruing after the enactment of the new statute. And such was the view taken by a subsequent Legislature, for the following act was passed February 8, 1826, to explain the obscurity of the act of 1824. (Chase, 1528–9.)

Whereas doubts have arisen whether the act entitled "An act for the limitation of actions," passed the twenty-fifth of February, eighteen hundred and twenty-four, does not suspend the operation of all former acts for the limitation of actions in all causes of action not barred by such former acts, prior to the twenty-fifth of February, eighteen hundred and twenty-four; therefore, to remove those doubts:

Sec. 1. *Be it enacted, &c.*, That all actions enumerated in and limited by the act entitled "An act for the limitation of actions," passed January 25, 1810, the causes of which accrued during the time the act was in force, and all actions enumerated in and limited by the act entitled 'An act for the limitation of actions,' passed January 4, 1804, the causes of which accrued during the time that act was in force, shall be commenced within the several times in those acts limited after the cause of such actions, and not after; and all such actions shall be barred after the expiration of the several times allowed for their commencement, according to the provisions of the said acts respectively.

Sec. 2. That for the limitation of all actions, the causes of which may have accrued before the 25th day of February, 1824, and after the 25th of January, 1810, the act entitled "An act for the limitation of actions," passed January 25, 1810, shall be, and the same is hereby, revised (revived) and in force, but for no other purpose whatever; and for the limitation of all actions, the causes of which may have arisen before the 25th of January, 1810, and after the 4th day of January, 1804, the act entitled "An act for the limitation of actions, passed the 4th day of January, 1804, shall be, and the same is hereby, revived and in full force, but for no other purpose whatever."

Then comes the act of February 22, 1830, which is an *amendment* to the act of 1824. (Chase, 1564.)

June, 1830, then such persons so disabled as aforesaid shall have the liberty of bringing such action within such times after the said 1st of June, 1830, as being added to the excess of time over eleven years as aforesaid will be equal to ten years, and no more."

The 4th, 5th, 6th and 7th sections relate to other matters, and are substantially the same as the old statute, barring contracts by the law of the State where made, and other things not directly affecting ejectments. Then comes the repealing section and the savings—thus:

Sec. 8. "That the act entitled 'An act for the limitation of actions,' passed Feb. 25, 1824; 'An act supplementary to to the act, entitled 'An act for the limitation of actions,' passed Feb. 8, 1826, and 'An act to amend the act, entitled 'an act for the limitation of actions,'' passed Feb. 22, 1830, and all acts and parts of acts heretofore passed for the limitation of actions be, and the same are hereby, repealed: *Provided*, That all causes of action not heretofore barred, which subsisted or accrued during the time those acts were in force, shall be commenced within the times therein limited, and not after; and all such actions shall be barred after the expiration of the several times allowed for their commencement, according to the provisions of said acts respectively and their amendments. This act to take effect and be in force from and after the first day of June next."

There is no further statute bearing on the general subject of limitations until the Civil Code of 1853; but the act of 1846 bears materially on "*non-residents*," and is a very important statute for us. If our action had not been brought before it took effect we would be barred. But the very passage of such an act was a legislative recognition, made at that time, that the clause, "beyond seas," was still in force, for such clause is expressly repealed. (1 Curwen, 1255.)

The act of Feb. 28, 1846, is in these words:

"AN ACT to amend the law for the limitation of actions.

Be it enacted, &c., "That so much of any act for the limitation of actions, heretofore passed, and now in force, as excepts or saves from the operation thereof the rights of any persons to have or maintain any action of ejectment for the recovery of any title or possession of lands, tenements or hereditaments, on account of such person being non-resident of this State or beyond sea, be, and the same are hereby, repealed: *Provided*, That as to causes of action that have already accrued this act shall not take effect till the fourth day of July, in the year eighteen hundred and forty-seven. This act shall be in force from and after the first day of April next."

3. The general rule regarding statutes of limitation undoubtedly is, that they are a part of the remedy and not a part of the contract. In Ohio, however, the uniform *principle* which pervaded her legislation, up to the act of 1846, was, that the statute in force when a right accrued continued to be the law of the right, although the statute might be repealed. All the preceding acts of limitation as to persons under disability, without exception, in express terms recognized the right of action at the *time* the right accrued, and provided that such right should be governed by the limitation in force *when* it accrued. And the 7th section of the act of 1831, the general act in force when our suit was brought, embraces especially all preceding acts of limitation and continues them in force for the government of rights already accrued. The civil code adopts the same principle. The act of 1810 was in force until 1824, and it was during that time that our rights accrued. By that act, then, we are to be governed. If we are not governed by that act, we are governed by none, for each succeeding act affecting us, declares in express terms, that we shall be so governed. Let us examine.

The saving clause contained in the 5th section of the act

of 1824 being ambiguous, the supplementary act of 1826 expressly *revives* the act of 1810, as to causes of action already accrued. Then comes the act of 1830, which is professedly a mere *amendment* of the act of 1824, and is not a general act of limitation. The 2d section of the act of 1824 is repealed, and the 1st section of the act of 1830, is *inserted* in its place, and has the same legal effect upon our rights as if it had been in the original, instead of the amendatory act. It simply alters the saving clause of the act of 1824 contained in its 2d section from twenty-one to ten years. But this section did not relate to actions that accrued under the act of 1810, but only to those that accrued under the act of 1824 itself. With the exception of the 4th section, which was modified, but which does not affect us, all the other parts of the act of 1824 were left by the act of 1830 in full force and unaltered. Now, surely, if the 1st section of the act of 1830 had been *inserted* into the act of 1824 when it was passed instead of the original 2d section, and all the rest of the acts of 1824 and of 1826 had remained just as they are, there could be no pretext to claim that that section barred our action. This is precisely the legal effect of the 2d section of the act of 1830. But it is claimed that the 4th section of the act of 1830 bars our action. This section, however, does, in effect, no more than conform the act of 1824 to the change made in its 2d section. This section as well as the rest becomes simply a part of the act of 1824. And though it may be retrospective, it operates only on the disabilities in the act of 1824, and not upon the disability "beyond seas" in the act of 1810. This section provides "*that in all cases where the person entitled to have or maintain any action of ejectment as aforesaid shall have been subject to any of the disabilities aforesaid,*" &c. Now, the disabilities referred to are clearly those enumerated in the act of 1824, which it *amends*, and not those of the act of 1810, which it neither purports to repeal nor amend, and to which it does not even make allusion. Nor does it repeal or amend the act of 1826, neither directly nor by implication. This brings us to the act of 1831, in the saving clause of which our rights are

directly preserved. It is difficult to conceive language stronger than that which was used. Our rights *accrued* under the act of 1810, and *subsisted* by direct and positive enactment under the act of 1826. The sole purpose of the act of 1826, was that the rights of those under the disability of "beyond seas" should *subsist*. And the act of 1831 in direct language provides that rights which *subsisted or accrued* under preceding acts of limitation should be limited by them. It names the three acts then in force by their titles, and merely refers to the acts of 1804—9 and 10, which had been heretofore repealed. Under each of these acts rights might have *accrued*, except the act of 1826. No right could *accrue* under its provisions. But they might *subsist*. And so, to preserve the rights for whose *subsistence* this act was passed, the word *subsist* was introduced into the saving clause of the act of 1831. If "*accrued*" only had been used, the old doubt as to the meaning of the 5th section of the act of 1824 might have been revived, for this saving of the act of 1831 is only in favor of "*rights of action not heretofore barred.*" So that if the word "*accrued*" only had been used, and the act of 1826, repealed, as no rights of action "*accrued*" under that act, the "*beyond seas*" disability of the acts of 1804 and of 1810, would have had no protection but the obscure saving clause of 1824. To preserve the rights of those under this disability, the word *subsist* was introduced. This construction makes these statutes all perfectly accordant, and preserves the principle uniformly followed up to the act of 1846, and re-enacted in the code, that all rights of action are to be limited by the law in force when they accrued.

It thus appears conclusively, by a critical examination of the statutes, that the disability of "beyond seas," as to all rights of action that accrued while the act of 1810 was in force, had never been repealed when our action was brought.

4. It may be profitable to consider briefly the rules for the interpretation and construction of statutes.

"The best rule to arrive at the meaning and intention of

the law is to abide by the words which the law-maker has used." "The interpretation to be given to the language used to express the intention should be such as to make the provisions of the statute consistent with reason." "A statute ought, upon the whole, to be so construed, that if it can be prevented, no clause, sentence, or word, shall be superfluous, void, or insignificant." (Bacon's Abridg., Bouv. Ed., vol. 9, p. 238–9.)

"It is an established rule of law, that all acts *in pari materia* are to be taken together, as if they were one law." (9 Bac. Abr., 243; Dwarris on Statutes, 701; Sedg. on Stat. Law, 247, 250.)

"All things which are within the intention of the maker of a statute is as much within the statute as if they were within the letter." (9 Bac. Abridg., 246; Dwarris, 691.") "Every part of the act is to be looked at." (Smith Stat. Law, sect. 503.)

"If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute." (9 Bac. Abr., 244; Smith's Com., sect. 636 et seq.)

"The great object of the rules and maxims of interpretation of statutes is, in all cases, if possible, to discover the true intention of the law; for this purpose, it is to ascertain what was the mind of the framers of a particular statute, and when that can be indubitably ascertained, the duty of the court is to give it effect, whatever may be their own opinion of its wisdom, expediency, or policy." (Smith's Com., sect. 515; 1 Kent's Com., 462.)

"It is never to be presumed that the legislature had nothing in view in making a law; hence it is another rule, that a statute should never be so construed as to render it a nullity, or quite elude its force; but such construction ought to be put upon it as that it shall have its full force and effect, and not be made vain and illusive." (Smith's Com., sect. 527; 1 Hob., 97.)

"Every interpretation that leads to an absurdity ought to be rejected; by this is meant, that no such construction should be put upon a statute as would lead to an absurd consequence. By an absurdity, in the sense in which we now use the term, we mean not only that which is physically impossible, but also what is morally so. We regard that to be morally impossible which is contrary to reason, or in other words, that which could not be attributed to a man in his right senses." (Smith's Com., 486; Vattel, b. 2, c. 17, sect. 282.)

"That several acts *in pari materia*, and relating to the same subject, are to be taken together, and comprised in the construction of them, because they are considered as having one object, and as acting upon one system," has been often held by jurists and courts. (1 Kent's Com., 463; Church *vs.* Crocker, 3 Mass., 21.)

"If by interpretation, laws may stand together, they shall so stand, and if two laws only so far disagree or differ as that they may, by any other construction, both stand, they will both be upheld; for whenever this can be done, the rule that subsequent laws abrogate prior ones does not apply; and the last law will not operate as a repeal of the former." (Canal Co. *vs.* Railroad Co., 4 Gill & John, 8; Smith's Com., 757.)

But these rules are too familiar to justify further quotations. By their light the proper construction of these statutes is not difficult.

The legislature in 1810 barred actions of ejectment in twenty-one years after the right accrued. Through all the changes of the statutes that is still the law. But the act also saved the right of persons under certain disabilities, and all these disabilities are still recognized in all subsequent acts, except the disability "beyond sea." This disability, so far as it operated to protect persons within the United States, was repealed in 1824, with a saving, and has never been re-enacted. So that the law stands now as it did in 1810, as

to these points, except that there is no protection to persons "beyond sea." But the act of 1810 provided that persons under disability should have twenty-one years after disability removed to bring suit. That was changed to ten years by the acts of 1830–31, and still so remains. But as to rights already accrued the rule was not changed. Now, our rights having accrued while the act of 1810 was still in force, we are entitled to its benefits. It is clear that the acts of 1824–26, taken together, continued, or if they did not, *revived* our rights under the act of 1810. This is admitted by the appellees' counsel, who adopts the opinion of the court below. "This (the act of 1826) *restored the act of* 1810 *as to all causes of action which accrued while it was in force, and had not been barred at the time of its repeal. We think that to this extent it restored the entire act, its savings as well as its limitations. This view of the subject is strengthened by the last proviso of the act of* 1831, *and the act of* 1846, *hereafter to be adverted to. We think this proposition too clear for discussion.*" (Justice Swayne's opinion, adopted in counsel's argument, p. 16.)

The act of 1810 being thus *revived* with its savings, it must be still in force for the purposes of the reviver, unless repealed. Two acts only have been passed which could effect a repeal of our rights, for the act of 1846 expressly saves them. These two acts are those of 1830 and 1831. The act of 1830 is only *amendatory* of certain sections of the act of 1824, none of which affected our rights. But, for the argument's sake, let it be admitted that the proviso to the fourth section of the act of 1830 did amend the act of 1826 by implication. It only provides for cases where the disability has "*been removed*" before the passage of the act; not to cases where the disability remained. If, therefore, the act of 1830 now remained in full force on the statute book, it could not affect the rights of such of Boyce's devisees as are still living, for according to its very terms they were entitled to "have and maintain" their action. Their disability of "beyond sea" had not "ceased" or been "removed," when the act took effect; and not one of the appellants had ever been in Ohio when the action was brought. The act then

could not bar their rights, even if it had been declared in express terms that it was an amendment of the act of 1810 and 1826 as well as of 1824.

But all this is still strengthened by the act of 1831, which expressly preserves all rights which had either *accrued or subsisted* under preceding acts. And though these rights might not have subsisted *by virtue* of the act of 1830, and only by virtue of the *revival* of the act of 1810 by the act of 1826, still the act of 1826 existed "*during*" the time the act of 1830 was in force; and so, in the language of the eighth section of the act of 1831, our action was not "*barred*" by either of the acts repealed, but "*subsisted during the time those acts were in force.*" Webster's Dictionary defines "*subsist*" thus: "1. *To be, to have existence, to inhere;* 2. *To continue, to retain the present state.*" And defines "*during*" thus: *In the time of, as long as the action or existence of.*" Clearly, then, this act of 1831 allows our "causes of action," which had thus "subsisted during" the time of the preceding acts, to be "commenced within the times therein limited." This time in our case, where the disability had not been removed at all, was twenty-one years after it should be removed, as was provided by the act of 1810 under which our rights accrued. No statute of the State until the act of 1846, ever cut off or altered a disability allowed by a preceding act, unless the disability had been removed before the act took effect; and even the act of 1846 allowed eighteen months for the assertion of rights already accrued.

6. A word more as to this statute of 1830, as it is so much relied on by appellees' counsel, and was treated by the court below as conclusive against us.

The acts of 1810 and 1824 provide that cases of action accruing under preceding acts should be governed by them. And the act of 1826 was passed to make it clear that this was what the act of 1824 meant. The act of 1830 follows the same *principle*, though expressed in different language. For it provides in the 4th section, that where disabilities have already been removed, they shall be barred—clumsily as it is expressed—by the preceding statutes.

Let us show this: The preceding statutes allowed twenty-one years after disability removed within which to sue. The statue of 1830 allows the same—eleven years before the enactment of the statute and ten years afterwards; and besides, provides that whatever period more than eleven years shall have transpired before the enactment of the statute, shall be deducted from the ten years allowed after its enactment. So that to any one whose rights accrued while under disability, this statute preserved exactly the rights existing before. If the disability had ceased, the ten years and the eleven made exactly the twenty-one years allowed by the old statutes; and if it had not ceased, the statute did not apply. So that even if the statute reached the act of 1810, as revived by the act of 1826, which it did not; and reached also the disability "beyond sea," which it did not; and also reached disabilities that had not been removed, which it did not; still it practically leaves all rights of action which had accrued to be governed and limited by the statutes during whose existence they accrued, except such as had already accrued under the act of 1824.

7. But there is still another view of these statutes quite at conclusive.

A legislative recognition of the existence of a right is an enactment of its existence. A statute, it has always been conceded, may be repealed or amended by implication. If the legislature passes an act which is clearly inconsistent with some previous law, the previous law must of course give way; but if they can both stand together, then they shall so stand. On the other hand, if an act is passed which clearly and distinctly recognizes the existence of some legal right, it creates a conclusive presumption of the right. And this goes upon the principle, that if the lawgiver had not understood such right to exist he would have conferred it. He *intended* its existence, but did not think it was necessary to enact its existence, because that would have been supererogation. Such recognitions are uniformly held to be law, and many of the affairs of life and government rest upon this presumption.

If a statute should require that wherever a man should marry an infant he must settle on her one-half his estate, this would be a legal recognition—an enactment—that a woman might marry before arriving at full age. If a statute provided that the successful party in a suit should have execution against his adversary for costs, this would empower the court to render a *judgment* for costs against the adversary, for how could an execution issue without a judgment? And most of the judgments now everywhere rendered for costs, rest on that basis. Suppose a gaming act provides that if the loser does not recover the money lost within one year, a common informer may do so for his own benefit. Now this is not a direct *enactment* that the loser may recover his money, it only recognizes that he may, by providing that if he does not another shall. Yet it is well settled, that under such a statute the loser may sue to recover money lost at gaming. And so in many other like cases.

The Congress of the United States carried on war against Mexico without declaring it, but only recognizing its existence. The Constitution provides that the Government may declare war; but there is no provision that it may make peace. Still who would doubt that the power to make war creates by implication the right to make peace? The legislation of all countries and the decisions of all courts are full of these instances of the conclusive presumption of the existence of a right resting merely upon legislative recognition. So that practically rights may be created by this mere recognition.

Let this principle be applied to the legislation now under consideration. The act of 1831 recites the acts of 1826 and 1830 as being in existence, and repeals them, with certain savings. Is not this a legislative recognition that they both continued in force until thus repealed? And again, and still more important to us, does not the passage of the act of 1846 conclusively presume, in a legal sense, the continued existence of the acts repealed? If in fact there were no acts in force in Ohio in 1846 saving to persons "beyond sea"

the right to sue after disability removed, then the act of 1846 was an absurdity. There was nothing on which it could operate. But we have seen that every interpretation that leads to an absurdity is to be rejected. The act must be construed according to the *intention* of the legislature, and the legislature evidently understood that such a disability as "beyond sea" did exist, and *intended* that those under it might sue within the time limited by the act, and should be forever barred if they did not. To suppose they did not so *intend*, is to suppose they did not mean anything; which could not be "attributed to men in their right senses." Besides, when all the acts *in pari materia* are taken together, this *intent* is quite apparent, for it renders all the acts perfectly accordant; whereas to give it a different meaning is not only absurd, but at war with the whole spirit of legislation on the subject.

8. It is claimed, however, by the counsel of the appellees, and held by the learned Justice below, that the Supreme Court of Ohio has settled the construction of the limitation laws of the State against the rights of the appellants. With perfect respect for the learning of the counsel, and for the learned opinion of the Justice, we think we can show that the Supreme Court of the State has not so decided. The case relied upon is that of *Walker vs. Knight*, 12, Ohio State Rep., 209. That was an action of ejectment, and the right of action accrued in 1827, when the plaintiffs were infants. Their disability ceased in 1837 and 1839, and the action was brought in 1855, being more than ten and less than twenty-one years after disability removed. The statute of limitation was pleaded, and the plaintiffs demurred. The court held that they were barred. All else that was held beyond what was necessary to *bar* their suit was mere *obiter dictum*. This court can only feel itself bound to follow the decisions, judgments, and necessary rulings of a State court; not its mere *opinions*. And no court is bound to go farther; for if all the reasonings given by judges *en arguendo* in arriving at their judgments, were treated as law, nothing could ever be settled. Now the only point necessary to rule, in order to

arrive at his judgment, was that the 2d section of the act of 1830 amended and took the place of the 1st section of the act of 1824. For it being a rule in courts that the statute of limitations affects only the remedy, then if this amendment did, in fact, take place, of which there can be no doubt, the plaintiffs were bound by it, although their rights had accrued before its passage. *That is the whole of the necessary ruling.* Judge Brinkerhoff says: "The only question is, whether the plaintiffs were barred by the lapse of ten years after disability removed, or whether it required the lapse of twenty-one years after disability removed, to constitute such bar?" The court ruled that the plaintiffs had only *ten* years, and not twenty-one, after disability, within which to sue. That the court was right we think as clear as that two and two make four. The only difficulty is to see how any one could ever have doubted it who admitted that statutes of limitation belong to the remedy, and that the word *subsisted* is added to the word *accrued* in the repealing and saving clause of the act of 1831. But how does that affect our case? The rights of the plaintiffs in that case *subsisted by virtue* of the act of 1830, if at all, and by that alone, and so, of course, must be "dominated"—to use the word of the Judge—by it. But our rights *subsisted* by virtue of the *reviving* act of 1826, and was in nowise controlled by that of 1830. Without following the Judge through all his reasoning, with which we have nothing to do, it is enough to say, that his closing words, which, it is true, are mere *obiter dictum*, distinctly recognize our rights; for he limits the bar to those "*whose disability ceased subsequent to the taking effect of that act.*" Whereas our disability had not ceased when suit was brought, for the appellants were constantly, in the legal sense, "beyond seas." This case, then, is not against us.

On the contrary, the Supreme Court has uniformly, except in one case, held the doctrine for which we contend. In the case of *Bigelow vs. Bigelow*, (6 Ohio Rep., 96,) Judge Lane expressly decided that the act of 1831 did continue in force the act of 1810, for the purpose of limiting actions that accrued under it. The learned counsel for the appellees

claimed the very doctrine as counsel in that case which we now claim in this. Again, Judge Hitchcock held in 1836, in the case of *Hazlett vs. Crichfield* (7 Oh. Rep., 497) the same doctrine; and that the act of 1810 was still in force as to actions that had already accrued. In *Putnam vs. Rees* (12 Ohio Rep., 21) the court were equally divided. The same principle was recognized and acted on in the cases of *Cary vs. Robinson*, (13 Ohio Rep., 181,) and of *Whitney vs. Webb*, (10 Ohio Rep., 513.) There are other cases to the same import.

It may then be taken as settled with reasonable certainty, by the highest tribunal of the State, that under the statutes of Ohio, antecedent to 1846, the limitation act in force when a right accrued to one under disability, is to govern that right, if the disability still continued when the act was repealed under which it accrued, and the code continues the same rule. Every repealing statute has had such a saving—at least as to actions of ejectment—in favor of rights already accrued.

9. There is still another point to be noticed. The statutes of Ohio have no saving as to the *heirs* of those who may die under disability. The question of whether such heirs represent their ancestor, and succeed to his rights, becomes a very important one in this case. Boyce left seven devisees. One actually conveyed his interest, and is of course out of the case. Three of the others died out of the State, leaving *heirs*, and the remaining three still survive. Without discussing at length the question, it is enough that in Ohio there has been conflict. The question arose in two of the cases just cited, *Cary vs. Robinson* and *Whitney vs. Webb*, and in both cases it was held that the saving was a *personal* privilege, and did not descend to the *heir*. In the latter case it was very elaborately, but we think very inconclusively, discussed. Judge Grimke, a very learned, but somewhat eccentric judge, argued the question, in delivering his opinion, as if it were a case of cumulative or successive disabilities. This, however, is not the case. It is not adding one disability to another; it is only inheriting one

from an ancestor. Besides, all the authorities he cites are cases where it was actually sought to exhaust *one* disability, and then lengthen out the time by *tacking* another to it; as coverture upon infancy. And in the case before him, it seems that both he and the counsel regarded it only from that stand-point.

These cases are in effect overruled, however, in a late case decided in 1854, by Judge Ranney, one of the clearest-headed thinkers and ablest men in the State, besides being one of the most learned lawyers. (*Lessee of Ford vs. Langel*, 4 Ohio State Rep., 465.)

The Judge says:

"The heir of one protected from the operation of the statutory bar is entitled to the full benefit of that protection, and may bring suit within the same time and to the same effect as though no change of ownership had occurred, and the suit was prosecuted in the name and for the benefit of the original owner. To hold otherwise, would be to divest infants, insane persons and *femes covert* of much of the benefit the statute was designed to afford, and would be utterly subversive of the well-established principle, that as against such persons the statute does not begin to run or to have any effect upon their interests during the continuance of the disability. Such interests therefore pass to the heirs or purchasers, wholly unaffected by any lapse of time that may have run while the owner was (*without?*) the provisions of the statute." The same court has very lately unanimously approved and adopted the ruling of Judge Ranney in the above case. (*Wintermute vs. Montgomery*, 11 Ohio St. Rep., 442.)

This being the doctrine in Ohio, we take it that this court will give it effect, whatever may be the general rule elsewhere. If so, the *heirs* of the devisees who are dead are as much entitled as the devisees who are living.

V. RESUMÉ.

1. The judgment in ejectment *bars* the reassertion in the equitable suit of all the *legal* questions adjudged therein, because: 1. The parties being *real*, not fictitious, after the defendants below were let in to defend, the judgment is on principle conclusive as to the actual parties, though in ejectment, if another demise were laid, the old judgment would not be as it would be between different parties. (Miles *vs.* Caldwell, 2 Wall, 39.)

2. The original bill claims an *equitable* title, and the amended bill cannot claim a *legal* one. This pleading is *double*, and in the alternative, and the court can only entertain the bill as a bill in equity.

II. POWER TO SELL.

I.

1. The will gives the legal title to the *devisees*—not to the executors. (5 McLean Rep., 322.)

See Will, Record, p. 87, and Brief ante, p. 6

2. A devise of lands to executors *to sell* passes the interest, but a devise that they *shall sell*, or that the land *shall be sold* by them, gives them but a power. (4th Kent's Com., 320; 1 Williamson Executors, 550; 1 Sug. Powers, 131–4; Hill on Trustees, 471, and note 1; 2 Spence Eq. Jur., 365.)

See Brief ante, p. 7

3. The devise is not in terms *to* the executors, and there is nothing indicating that *they* are to dispose of the real estate or to educate the children.

4. But the will does not give even a *power* to the executors; for they are not expressly or by implication required to perform any acts about it. (Knacker *vs.* Rauburg, 6 Bing. N. C., 306, and authorities under preceding point.)

II.

1. But if a power *is* given the executors by the will, it

becomes important to know its nature—whether it be a *naked* power, a power coupled with an interest, or a *personal* trust and confidence.

2. A naked power not coupled with an interest does not survive, but terminates with the death of the donee. (Coke Litt., 112, 113, 181; Shep. Louch., pl. 9, p. 429; Powell on Devises, 292, 310.)

See Brief ante, p. 8

3. This was altered in England by Stat. 21. Hen. VIII., ch. 4, as to executors. (4 Eng. Stat. at Large, 166.)

4. A power coupled with an interest merely—not being a *personal* trust or confidence—*does* survive and may be executed by one of several.

See Brief ante, p. 8

5. But wherever the power is reposed in *personl* trust and confidence then the power does not survive, and one of several cannot execute the power.

6. As to executors, the weight of authority is that the power survives and may be executed by one, if they are to distribute the proceeds. (Peters *vs.* Beverly, 10 Peters, 534; 1 Howard, U. S., 134; 2 Story's Eq., 1062; Dabney *vs.* Manning, 3 Oh., 325.)

See Brief ante, p. 8

7. But though a less number than all appointed may qualify, still all who do qualify and are in full life and being must execute.

See Brief ante, p. 9

8. A *personal* trust and confidence, however, does not survive, and one of several cannot execute. In our case, if there be any power, it can be no other than a personal trust. (Berger *vs.* Duff, 4 J. Chan., 369; 2 Williams on Ex., 807; 1 Sug. Powers, 213.)

See Brief ante, p. 9-10

III.

1. Then, if there was a power conferred by the will, and that power has been attempted to be executed, is it a case of *non*-execution or of defective execution?

2. The court will aid a *defective* execution, but not a *non*-execution. (4 Kent's Com., 339; 1 Story's Eq. J., 169–70, 1 White & Tendor, 155.)

See Brief ante, p. /2

3. But where one of several executes the power, and it was of a nature to require the co-operation of all, then it is a *non-execution* and void. (1 White & Tudor, 166; 1 Story's Eq. Jur., 175; 16 Illinois Rep., 329.)

See Brief ante, p. /2 - /3

III. Affirmance of Sales.

1. There was no power to sell, and, the sale being void, there was nothing to affirm.

2. To make a contract good by *affirmance* requires as much capacity as to make it originally.

3. Married women cannot affirm unless as to their separate estate. (Drake *vs.* Ramsey, 5 Oh., 251.)

See Brief ante, p. /5

4. Infants' contracts are only *voidable;* but where there is no direct act of *affirmance* no period of acquiescence short of the statute of limitations will bar them from disaffirming. (1 Parsons on Cont., 274 and note.)

See Brief ante, p. /5-16

5. But to make such an acquiescence valid it must have been with a full knowledge of all the facts, and so cannot bind these parties, for they had no personal knowledge of their rights, and so could waive nothing.

6. Upon disaffirming, they are not bound to return the purchase money, because they were in no fault, and did not make the contract sought to be disaffirmed.

IV. Statute of Limitations.

I.

1. Abstract of Ohio statutes. (See Brief. pp. /8-25)

2. The statutes of limitation in Ohio, at least as to the ejectment, have uniformly gone on the *principle* that the statute in force when the right *accrued*, is to be the law of the

contract. So that there is no exception, even including the code, except the partial one found in the act of 1830, which shortened the saving in favor of disability in the act of 1824; and this act does not affect us. The act of 1846 might seem also to be an exception, but our rights are expressly saved under it. (See brief, pp. 25-6-7

3 These acts may be classified as to three points: 1. The limitations they contain: 2. Provisos saving rights on account of disability; and 3. Savings on the repeal of statutes.

4. These limitations have always been twenty-one years, except in the act of 1804 which was twenty.

5. The savings as to disabilities have always been the same, except that the acts of 1804 and 1810 saved the rights of those out of the State—"beyond sea"—and the act of 1824 of those out of the United States.

6. Whenever a *general* statute was repealed, all rights were left limited by it exactly as if it had not been repealed. To this there is no exception, not even the code.

II.

1. Rules for the construction of States.

See brief, ante, p. 27-8-9

2. The intention of the lawgiver is to govern.

3. Where two statutes can stand together both are to be in force.

4. The statute of 1810 governs our rights. It was repealed with a saving of our rights by the acts of 1824–6. Our rights indisputably had existence by the act of 1810 and *subsisted* by the act of 1826.

5. The act of 1830 only amends the act of 1824, and no other act.

6. But if it did operate on rights protected by the act of 1810 it, by its very terms only did so where the disability was already *removed*, and the disability of appellants not being removed it did not affect them.

7. The act of 1831 saves all rights that either *accrued or*

subsisted under former acts, and our rights both *accrued and subsisted* under former acts.

8. There was no need of putting the word "subsisted" into the act of 1831, except to preserve our rights, for rights could *accrue* under all the acts repealed, except the act of 1826, and under that they only *subsisted;* and if the word accrued only had been used they would have been lost.

9. Finally the act of 1846 *enacts* by recognition that our rights were not cut off by previous acts.

III.

1. The Supreme Court of the State has always given the very construction to these acts now contended for.

2. The case of Walker *vs.* Knight, 12 Ohio St. Rep., is not an exception. For the *real* point decided does not affect us, but turns entirely on the construction of the act of 1830. (Walker *vs.* Knight, 12 Ohio S. 209.)

See brief, ante, p. 34.)

3. The Judge in the very case relied on, in closing his opinion, expressly applies even his arguments to the cases where the disability had been already removed.

4. *Finally:* The courts in Ohio have decided that where one dies under disability his *heirs* may assert the disability. (Ford *vs.* Langel, 4 Ohio S. Rep., 465; Wintermute *vs.* Montgomery, 11 Ohio S. Rep., 442.)

In conclusion we submit this case with great confidence, both as to its law and its justice. For nearly fifty years, without any fault of theirs, the appellants have been kept out of lands, acquired by their ancestor in the gallant service of his country; and while his descendants have been defending the old flag on the "tented field" in this second revolution, strangers have enjoyed what a grateful country bestowed on their grandfather for patriotic devotion in the first.

DURBIN WARD,
Of Counsel for Appellants.

WASHINGTON, D. C., *Dec.* 14, 1865.

SUPREME COURT OF U. STATES.

No. ~~150.~~ 79

BOYCE, DUNLAP & OTHERS, Appellants,

vs.

HADLEY, PYLE & OTHERS, Appellees.

ABSTRACT AND BRIEF FOR APPELLEES.

HENRY STANBERY, Counsel for Appellees.

SUPREME COURT U. STATES.

No. 150.

BOYCE, DUNLAP AND OTHERS, APPELLANTS.

vs.

HADLEY, PYLE AND OTHERS, APPELLEES.

ABSTRACT AND BRIEF FOR APPELLEES.

The land in controversy in this case consists of three surveys in The Virginia Military District in Ohio, containing together 2666 2-3 acres.

It was owned by William Boyce, of Kentucky, as patentee.

He left a will, which was made December 9, 1811, and probated in February, 1812. He died in January, 1812.

By this will the testator first declares that he had made advancements to his three sons-in-law to the full amount of what he intended as the shares of his three married daughters.

The testator had a wife and six unmarried children, three sons and three daughters, all but one minors, for whom he provides as follows:

"As my estate is in various parts of the world, and of various descriptions of property, so that I can not make equal distribution in my will amongst the rest of my children, who have as yet not received their patrimony, by pointing out to each their kinds of property, in order to

do equal justice to them and my loving wife, I give and bequeath every part of my estate, of every kind whatsoever, to be equally divided, by sale or otherwise as may seem best, between my loving wife and my children not heretofore named, and their heirs forever, having particular regard to the education of my children not as yet educated.

"I constitute, ordain and appoint my loving wife Elizabeth my Executrix, my sons John and William, and Thomas Wrenn, my son-in-law, the whole and sole Executors of this my last will and testament. *In case Thomas Wrenn should serve as Executor*, after all the business of my estate is settled, and upon his rendering a fair and just account of his proceedings, then it is my wish he should be amply compensated for his trouble."

Elizabeth, the widow and Executrix, and John Boyce the son, qualified respectively as Executrix and Executor. William, the son, and Wrenn, the son-in-law, did not qualify, or assume to act under the will.

On the 25th of August, 1812, Elizabeth, the widow and Executrix, married Gerard McKinney. At various dates between the 6th November, 1813, and the 1st of January, 1815, John Boyce, as Executor, and Gerard McKinney, as husband of the Executrix, sold all these surveys to four original purchasers of separate parcels. Each of these four purchasers subsequently made full payment under their respective contracts, and received their deeds at the following dates:

William Hadley, for one tract, September 1, 1814.
Aaron Oxley, March 21, 1816.
William Hadley, for another tract, March 23, 1816.
Richard Cast, March 23, 1816.
James Birdsall, March 22, 1816.

These deeds, like the contracts of sale, all purport in the premises to be made by "Gerard McKinney and Elizabeth his wife, Executrix, and John Boyce, Executor, of William Boyce, deceased."

They are signed "Gerard McKinney and Elizabeth his wife, Executrix," and "John Boyce, Executor."

The purchasers entered into actual possession of their respective tracts at the dates of their purchase, claiming as owners, and such adverse possession has been continued to the present time by them or their vendees and heirs, and large and valuable improvements have been made, and on one tract a town has been laid out and settled.

The title of these parties was not questioned until the 8th of October, 1846, on which day they were served with notice of an ejectment brought against them in the U. S. Circuit Court for Ohio, on the demise of such of the six children of Boyce, the Testator, as then survived, and of the heirs of such of them as had deceased. In the year 1851, there was a judgment in the ejectment in favor of the plaintiffs, with stay of execution, to allow the defendants in ejectment to file a bill in equity.

A bill in equity was accordingly exhibited in the State Court, which was transferred into the U. S. Circuit Court for Ohio, on the ground of citizenship of the defendants to the bill.

It is under this bill that the parties in possession claim relief—under two aspects of the case.

One is that they have the legal title—

1. Under the will of John Boyce.
2. Under the statute of limitations.

The other is, that if they are not clothed with the legal title, the equitable circumstances which appear in the case entitle them to a decree for the legal title.

I will consider these grounds in the order stated.

1. The legal title passed by the conveyances made to the purchasers.

We are met here with the objection that the Chancellor could not consider this question, because of the verdict and judgment in the ejectment, which proceeded on the ground that the legal title was in the opposite parties.

To this we answer, that a judgment in ejectment is no bar—and concludes no right—and that the Chancellor as well as a Common Law judge, may refuse to follow it.

Van Wick *v.* Seward, 6 Paige, 65; Same Case, 18 Wend. 377.

Another objection is made to our bill in this aspect of it, and it is, that as a bill of peace to quiet a legal title, it could not be brought until we had first established our legal right by a trial at law.

It is true that the bill of peace under the English practice must be preceded by a verdict at law—but in this case it is impracticable, from the number of the parties, to pursue that course. We have a footing in equity upon that very ground, which excuses us from the necessity of resorting to a court of law. Being properly before the Chancellor, if he deems the case of such a character as to require the finding of a jury, he may direct an issue. But in this case no such finding is necessary to inform the conscience of the Chancellor, for there is not a single fact in dispute. All the questions arise upon construction of a will; of powers to sell; of the execution of powers, and other points, which the Chancellor is quite as competent to decide as the Common Law judge.

Again, this bill was exhibited in the State Court, and to enforce a remedy given by a State statute. That State statute authorizes a bill of peace in favor of a party in possession of land, claiming the legal title, without requiring a verdict in ejectment.

Our bill was rightfully brought in the State Court. The opposite parties chose to remove the case into the U. S. Court, for the sake of a more impartial tribunal. I take it such removal takes up the case for adjudicatian in the same plight it stood in the State Court, and according to the remedy as established by State legislation.

It is like an ejectment brought in a State Court, under State legislation, upon an equitable title. If such a case is brought into the U. S. Court, the plaintiff can not be turned out of Court because he can not show a legal title.

In other words, in the exercise of this important branch of jurisdiction, the Courts of the United States exercise a sort of vicarious jurisdiction.

To make out a legal title under Boyce's will, we must show that it gives a power to the Executors to sell, and that the power has been well executed.

Two leading objects were in the mind of the testator—the education of his younger children—and, subject to that charge, equal distribution of all his estate, real and personal, to his wife and his six children not advanced.

He says, that his estate consists of various descriptions of property, "in various parts of the world," so that he is unable to make equal distribution himself—and, therefore, he directs that all his estate "shall be equally divided, by sale or otherwise, as may seem best;" "having particular regard to the education of my children, not as yet educated."

He then appoints his wife, his sons John and William, and his son-in-law Wrenn, his Executors—and directs that ample compensation be made to Wrenn, if he should serve, after all the business of the estate should be settled up.

1. There is a power to divide by sale or otherwise, "*as may seem best.*" This implies a discretion to be exercised.

By whom? We say, by the Executors. There is no other agency capable of exercising this discretion--for no Court could act upon the whole estate—and the devisees were most of them infants, and could not exercise a discretion for themselves.

2. This power rides over the whole *corpus* of the estate, real and personal. It is all made *one* fund, for all the purposes of the will—that is to say, for education, and for equality of distribution. Now, as to the personalty and its distribution, *that* power belongs to the Executors, in virtue of their office. No other agency to make division being designated, the Executors, who have the power, must exercise it. But if they must exercise this power as to a part of the entire subject matter to be divided, they necessarily must exercise it as to the whole.

1 Eng. Ch. Rep. 239; Tylden *v.* Hyde, 2 Sim. & Stew. 238; Ward *v.* Devon, 11 Sim. 160.

3. It clearly appears that the testator intended to vest this power in the Executors, from the fact that he appoints no less than four, all members of the family—one of them a son-in-law, to whom ample compensation is to be made after all the business of the estate should be settled. What business required so many heads, so much time, and such ample compensation? Payment of a few debts? Was that *all?* The will don't even refer to his debts. He means the important business, first of deciding whether to sell or divide, in specie, all his large estate; and next, of making division, by sale or by partition, and providing for the education of his younger children. It is for the performance of these important duties, that ample compensation is to be made; for if these duties did not de-

volve on the Executors, there was nothing else to be done worthy of notice, or of ample compensation.

It seems quite clear, from these obvious considerations, that there is a power to divide, by sale or otherwise, given to the Executors.

The Court, in the case at law, (5 McLean's Rep. 322), held that there was no such power, because it could not be given except *expressly*—in other words, that such a power will not be implied.

For this general proposition there are to be found some cases, as well English as American, but their authority was questioned from the first, and they stand opposed to what is now considered settled doctrine.

The cases to which I allude are: Drayton *v.* Drayton, 2 Desaussure, 250; Bentham *v.* Wiltshire, 4 Mad. 44; see 1 Sugden on Powers, 3d American ed., p. 194, top, secs. 41 to 51; *Ibid.* (140), sec. 54; Ward *v.* Devon, 11 Sim. 160; Meaking *v.* Cromwell, 1 Seld., N. Y. 136.

THE NATURE OF THE POWER.

It was not a naked power to sell, but coupled with a trust and an interest, and a discretion, and, therefore, on the refusal of Wrenn and Wm. Boyce to act, the power survived to Mrs. Boyce and John Boyce, who qualified as Executors.

Mrs. Boyce then married a second husband, McKinney.

We claim that the marriage worked a *cesser* of this power, as to the widow, and that it then survived to John Boyce alone.

If it were a naked power, the Executrix, notwithstanding coverture, might exercise it; but she had an interest of one seventh in the estate, which must be affected and must pass by the execution of the power. By the laws of Ohio she could not affect that interest, except by a joint

conveyance to be made with her husband. To suppose that the power remains in the widow after the second marriage, is to defeat the purposes of the will, for the execution of the power then must depend on the discretion or will of the second husband. *That* the testator never intended.

We say, therefore, that the power was well executed by the deed of John Boyce, as sole survivor of the power, and that the title of the appellees is valid.

THE STATUTE OF LIMITATIONS.

It was upon this ground that the decree of the Circuit Court was rendered in our favor. I append to this brief a printed copy of the opinion. It is so thorough and conclusive, that I am content to leave this point upon the showing of that opinion.

THE EQUITABLE CIRCUMSTANCES.

If we can not sustain our title, as a legal title, under the Executor's deed, or under the statute of limitations, we next ask relief against the holders of the legal title, upon the footing of an equitable case, already made out.

Assuming that if the Court is against us on the first point, it will be on the ground that the conveyance of John Boyce alone did not carry the legal title—it would present the case of the defective execution of a power.

It will be found upon examination of admitted facts, that the equity of the purchasers is complete. Every circumstance, every consideration founded in conscience and fair dealing, concur to support their demand, and toestop the adverse claimants.

In the first place, it is to be noted that in the execution

of this will, the first thing to be done is, upon the exercise of the discretion given, to decide whether it is best to sell. It was decided that a sale was best. It expressly appears that John Boyce, the Executor, and McKinney, the husband of the Executrix, came to that conclusion—for they both concurred in the sales, and signed the deeds. So, too, we must conclude that the Executrix had also so decided, for the reasons to be presently stated. The next step in the execution of the power, was to make the sales. No particular form or ceremony of execution was necessary here—either one of the donees of the power might make the sale and sign the contract—subject to the assent or ratification of the other.

Here the sales were made by one of the donees of the power, John Boyce. Did the Executrix consent to the sales, or ratify them?

The proof is conclusive, that in every form, as Executrix—as Guardian—and in her individual right, she was cognizant of all these sales, and received and disbursed every dollar of the proceeds.

At the October term, A. D. 1824, of the County Court of Fayette county, Kentucky, the Executors settled their account. This account is entitled as follows:

"Dr. The estate of Wm. Boyce, dec'd, in account with Gerard McKinney and wife, Executrix, and John Boyce, Executor, - - Cr."

The Executors are charged with the purchase money, dollar by dollar, for which these lands were sold, at the proper days and times; and are credited, in like manner, for the distribution thereof to the devisees and legatees.

The particular form of these charges and credits, is worthy of notice. I give one or two by way of example:

"1813.

Nov. 6.	To cash of Aaron Oxley, for Ohio		
" "	lands—first payment, - - -	$ 508	25
" "	To cash of Wm. Hadley, do do -	1000	00
		1508	25

1813.

Nov. 17.	By cash paid John Boyce, for his and William's part of money received of Hadley & Oxley, for Ohio lands sold them—their first payment, - - - - -	$430	92⅝
" "	By cash paid G. McKinney and wife, for their part, and the parts of Daniel, Emily, Peggy and Caroline, received as above, - - - - - - -	1077	32⅜
		1508	25"

NOTE.—John was the legal guardian of *William;* and McKinney and wife, of *Daniel, Emily, Peggy* and *Caroline.*

Here is a peculiar, exact, and particular accounting—following out, to the fraction of a cent the directions of the will, "TO DIVIDE equally," *by means of a sale,* the testator's property.

The entire account, from which the above extracts are made, shows the particulars as to the receipt and disbursement of every dollar from the Ohio lands, as appears from a tabular statement made up of those items, which is as follows:

The Executors in account with the Legatees and Devisees.

			Dr.	Cr.
1813.				
Nov.	6.	To cash of Oxley, for Ohio lands—1st payment	$ 508 25	
"	"	" do. Hadley do. 1st do.	1000 00	
			1508 25	
"	17.	By cash paid John Boyce for his and William's part of money received of Hadley and Oxley, for Ohio lands sold them—their 1st payments.		$ 430 92 2/7
"	"	By cash paid G. McKinney and wife for their part, and the parts of Daniel, Emily, Peggy and Caroline, as above		1077 32 1/7
				1508 25
1814.				
Jan.	12.	To cash of Cass [Cast] for his 1st payment for Ohio lands	500 00	
"	"	By do. paid McKinney and wife their part of same, and as guardians, etc.		357 14 2/7
"	"	By do. paid John, his and William's parts		114 85 5/7
				500 00
Sept.	1.	To cash in full for Ohio lands sold Hadley, $1916.82 (and interest $40).	1956 82	
"	"	By do. paid McKinney and wife for their part, and the parts of Daniel, Emily, Peggy and Caroline, of same		1397 73
"	"	By cash paid John Boyce, his and William's part of same		559 09
				1956 82

The Executors in account with the Legatees and Devisees—Continued.

1814.		Dr.	Cr.
Nov. 1.	To cash received of Cast, in part on Ohio lands sold him	$150 00	
" 15.	By do. paid McKinney and wife, their and Daniel, Peggy and Caroline's part of same		$107 14 2/7
" "	By cash paid John, his and William's part of same		42 85 5/7
			150 00
1815.			
Jan. 3, 5.	To cash of James Birdsall, in part of Ohio lands sold him	900 00	
July 8.	By do. paid McKinney and wife, their part and the parts of Daniel, Emily, Peggy and Caroline, of above		642 85 5/7
" "	By cash paid John, his and William's parts as same		257 14 2/7
			$900 00
1815.			
March 25.	To cash of Oxley, his last payment for Ohio lands sold him	508 00	
" "	To " do. double interest till paid	84 66½	
" "	To " of R. Cast, his last payment for Ohio lands sold him	250 00	
" "	To " do. double interest till paid	41 79½	
" "	To " of Birdsall, his last payment for Ohio lands sold him	788 12½	
" "	To " of do. legal interest till paid	156 15	
" "	To " of Hadley, his first payment for Ohio lands sold him last	1000 00	
		$2828 73½	

The Executors in account with the Legatees and Devisees—Continued.

		Dr.	Cr.
1815.			
July 8.	By cash paid John, his and William's part of $2744.33, received of Oxley, Birdsall and Hadley, for Ohio lands sold them		$784 09 3/7
" "	By cash paid McKinney and wife, their part, and the parts of Daniel, Emily, Peggy and Caroline, of same fund		1960 23 4/7
			2744 33
	NOTE.—There is, in this instance, a difference between the amount of the sums received and amount disbursed *to the heirs*. But it is all accounted for in other disbursements. Amount of difference		84 40 1/2
			2828 73 1/2
1818.			
March 28.	To cash of William Hadley, in full, for Ohio lands sold him	900 00	
May 29.	By cash paid McKinney and wife, their part and the parts of Daniel, Emily, Peggy and Caroline, of the same		642 85 5/7
" "	By cash paid John Boyce, his part of same		128 57 1/7
June 3.	By " paid William Boyce, do.		128 57 1/7
			900 00
	Total amount of principal and interest received and disbursed		$8,659 40

In this branch of the case it must not be forgotten that we are proceeding upon the ground that the power of the Executrix was not extinguished by her marriage. She was therefore, as to this power a *feme sole*, and capable of selling, or consenting to or ratifying a sale—and so too, capable of accounting for the proceeds of sale.

It is wholly immaterial whether the Executrix actually joined in the sale or consented to it, or ratified it afterwards. In point of fact, it was impracticable that all the Executors should join in the act of sale, for the lands were in "various parts of the world."

The law accommodates itself to such inconveniences. It is said in Hill on Trustees, page 474, that a trustee may appoint an agent to perform the usual details of sale.

"Trustees with a power may act by attorney, if they restrict him to the conditions imposed upon themselves." Sinclair *v.* Jackson, 8 Cowen, 582.

"Trustees may intrust agents with authority to make conditional sales of lands lying at a distance from the place of residence of the trustees, subject to the ratification of the trustees." "The better course, therefore, is to intrust the agent with a discretionary power to control, subject to the ratification of the trustees, upon his report of the facts; and that they shall themselves execute the conveyance when the terms are complied with." Hawley *v.* James, 5 Paige, 487.

We may, therefore, safely take it as established, that the Executrix did concur with the surviving Executor, in the exercise of this power of sale. Every one of these sales was made in the due execution of the testamentary power. No one questions the fairness of these sales. They were for full value, and every cent of principal and interest was paid to the right parties.

After all this, what remains to be done? Nothing but

a formal conveyance of the legal title. The essence of the power was strictly performed. The testator did not require concurrence in the conveyance, or prescribe the mode of its execution. It was *the sale* that he looked to as the essential thing. All else was mere form.

The result of the transaction was, that the purchasers had entitled themselves to conveyances—that the Executor and Executrix were bound to convey—that they attempted to perform that duty, and made, as to one of them, an informal deed.

There *must* be relief in such a case; to the legal mind upon the statement of the case, there can be no difficulty in finding ground for relief.

First, on the common ground of the defective execution of a power. This proceeds upon the idea that no other, or more formal deed, has ever been executed—and that we must ask that a decree be now made for a formal conveyance.

The case, in this aspect, is so clearly one of defective execution, and the whole doctrine is so familiar, that I will spend no more time upon it.

Second, on the ground of *presumption*, that the defect was long ago supplied by a proper conveyance.

All the facts—that is to say, the sales at fair prices—the full payment and distribution of the purchase moneys—the long continued possession, and improvement of the lands—everything concurs to give us the benefit of this wholesome doctrine of presumption.

It is one of those cogent cases, in which the presumption is made as a positive rule, even against our impression as to the actual fact.

So that if it be said, "how can a presumption of a formal deed be made in your favor, who produce a defective one?"

The answer is, "we are entitled to the presumption of a subsequent formal conveyance to cure that very defect."

It is not allowable to go further against this presumption, by asking us for evidence of such subsequent deed, for that carries us out of the region of presumptions into that of actual proof.

Recurring again to the ground for relief, based upon the equitable circumstances, it will be seen that hitherto we have relied upon the acts of the Executor and Executrix, in making the sales, receiving the proceeds, etc. Such ratification is enough for our protection—for the other devisees—the *cestuis que trust* under the will—are also bound by the acts of their trustees. 14 O Rep. 239. 2 O. State Rep. 267, 268.

But if we were put to show circumstances of ratification against these *cestuis que trust*, we have abundant proof on that head.

The proceeds of these sales have been received and enjoyed by the respective *cestuis que trust.*

As to John's part, he was of age, and received his part in person, so of the widow. The payments of her part appear to have been made to her and her husband jointly. It will scarcely be questioned, I presume, but that such a payment is as effective for all purposes as if she had been sole and unmarried. It would have been good on a plea of payment. And as to William, he became of age before his last installment was paid, and received it himself.

How is it with Daniel and the three daughters, Emily, Peggy and Caroline?

1. DANIEL. Touching his share, it is to be observed that he died testate, by his will not attempting to dispose of the lands in controversy; but by reason of the generality of its terms, any interest he might have in the same would

pass. His devisees are made parties defendants, and are before the Court. They have failed to answer, and the bill is, of course, to be taken as confessed against them.

But in addition to this, McKinney and wife, as his guardians, settled their account on the —— day of October, 1820, before the Fayette County Court. This account is on file by copy, duly certified, and shows that the guardians duly charged themselves, at the proper dates, with this one-seventh part of the payments received from "the Ohio lands."

He came of age August 9, 1824, and died November 4, 1835, having lived more than eleven years after he attained his age of majority, and upwards of fifteen years after the settlement of his guardians' account. Who doubts but that he received all that was due to him?

Shall it now be *presumed* that he, within the eleven years after his majority, did not inform himself touching the history of his father's estate; and that he remained ignorant of the transactions in regard to these Ohio lands? In the absence of proof upon the subject at this distance of time, which way does the weight of the presumptions incline, in favor of his being informed upon these subjects, which were also essentially important to be known by him, with the public records which we have referred to of accounts, open to his inspection, and family traditions, usual about such matters, existing about him? or, is it the presumption that he remained in ignorance of these things?

2. In regard to CAROLINE. She also is dead—intestate—without issue. Her guardians, McKinney and wife, also settled their account before the Fayette County Court, in 1828, in which they charge themselves, at the proper dates, with her one-seventh part of the payments received for "the Ohio lands;" and the account shows that

the fund was carefully husbanded, and, so far as necessary, applied to her support and education; and the balance remaining due to her on the settlement, is substantially admitted, in the answer, to have been paid over to her husband, —— Shreeve, after her marriage.

She attained the 18th year of her age on the 10th day of October, 1826; was married January 1, 1829; died September 21, 1833.

In regard to the presumptions of knowledge of the material fact, her case is like that of Daniel.

3 and 4. In regard to EMILY and PEGGY. It seems they both survive. Emily was 18 years of age on the 18th of December, 1822; was married to the defendant, John R. Dunlap, April 30, 1822. Peggy was 18 years old January 10, 1824; and was married to the defendant, Levi Prewitt, November 1, 1826.

No accounts are filed in these cases of settlement with the Court, by McKinney and wife, as their guardians; but Dunlap and wife admit that, after their marriage, there was paid to Dunlap, *nominally*, $1237 36 on her father's estate; and Prewitt and wife admit that they received, *nominally*, about $1200.

There can be no doubt but that these sums were the balances due to these parties from the guardians, including the proceeds of the Ohio lands, over and above disbursements previously made.

It thus appears, satisfactorily, that each and all of the devisees of these lands, under the will of Wm. Boyce, have received their due distributive shares of the purchase money. Yet, with the fact plainly open to their observation, and without the slightest pretense of fraud or unfairness, or that the sales were below the value of lands at the time, the effort of the defendants is to retain the price and

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recover back the lands, upon some supposed technical defect in the powers of the Executors—excusing themselves in the grossness of the attempt by allegations of infancy and coverture, at the time the husbands of Emily, Caroline and Peggy, received their shares of the estate.

"If one whose goods are sold without authority, accepts the proceeds, he ratifies the sale." Story's Agency, 259.

"Where a trustee sells the trust estate, the *cestui que trust* may either disregard the sale and take the land, or affirm the sale and take the avails. He cannot have both. Murray & Winter *v.* Lylburn *et al.*, 2 John Ch. Rep. 442.

The chancellor says in the above case, "the *cestui que trusts* are not entitled to the land, and also to the purchase money."

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Jan. 1865. *Counsel for Appellees.*

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HENRY STANBERY.

Jan. 1865. *Counsel for Appellees.*

Opinion of the Court 2643

Delivered by Judge Swayne

UNITED STATES CIRCUIT COURT.

JOHN HADLEY & WILLIAM PYLE, FOR THEMSELVES AND IN BEHALF OF OTHERS, COMPLAINANTS.

vs.

JOHN R. DUNLAP AND WIFE AND OTHERS, DEFENDANTS. *In Chancery.*

The case made by the bill, amended bill, answers, exhibits and testimony, so far as it is necessary to state it, is as follows:

William Boyce of Kentucky, at the time of his death owned the land in controversy, consisting of three military surveys, numbered 2227, containing 1000 acres, 2245, containing 1000 acres, and 2246 containing 666⅔ acres.

His title was derived from the United States, by patents bearing date respectively the 25th day of March, and the 5th day of April, 1802. His title was indisputable. He died on the 16th day of January, 1812, leaving a will, which was duly admitted to probate in the County Court of Taylor County, Kentucky, at the February Term, 1812.

No question is made as to the validity of the will.

That part of it which is material to be considered in this case, is as follows:

"As my estate is in various parts of the world, and of various descriptions of property, so that I can not make equal distribution in my will amongst the rest of my chil-

dren, who have not as yet received their patrimony, by pointing out to each their kinds of property, in order to do equal justice to them and my loving wife, I give and bequeath every part of my estate of every kind whatsoever, to be equally divided by sale or otherwise, as may seem best, between my loving wife and my children not heretofore named, and their heirs forever, having particular regard to the education of my children, not as yet educated."

"I constitute, ordain and appoint my loving wife Elizabeth, my executrix, my sons John and William, and Thomas Wrenn, my son-in-law, the whole and sole executors of this my last will and testament. *In case Thomas Wrenn should serve as executor* after all the business of my estate is settled, and upon his rendering a fair and just account of his proceedings, then it is my wish he should be amply compensated for his trouble."

Elizabeth Boyce, the widow of the testator, gave bond and qualified as Executrix, on the 11th day of August, 1812.

John Boyce, his son, gave bond and qualified as Executor, shortly afterwards. The precise date does not appear anywhere in the case. Neither of the other parties named as Executors, ever qualified or acted.

The parties entitled to take as devisees under the will of the testator, were:

His widow, Elizabeth Boyce, and his children John, William, Daniel, Emily, Peggy and Caroline.

Elizabeth Boyce, the widow and Executrix, married Gerard McKinney, on the 25th of August, 1812.

Subsequently to this time, John Boyce, the Executor, and Gerard McKinney, claiming to act for his wife as Executor, came to Ohio and sold the land in controversy, as follows:

To William Hadley, on the 6th of November, 1813, 378 acres of survey No. 2227, for $1900.

To Aaron Oxley on the same day, 356 acres of the same survey for $1600.

To Richard Cast, in 1814, 300 acres in surveys No. 2227, and No. 2245, for $900.

To William Hadley, September 1, 1814, 972 acres in the same survey, for $2916.

To James Burdsall, January 1, 1815, the whole of survey No. 2246, for $1688 12½.

Full payment was made by the purchasers, and John Boyce as Executor, and McKinney for himself and his wife as Executrix, executed deeds as follows:

To William Hadley, March 19, 1814, for 972 acres parts of surveys No. 2227, and No. 2245.

To Aaron Oxley, March 21, 1816, for 356 acres, part of survey No. 2227.

To William Hadley, March 23, 1816, for 378 acres, parts of surveys Nos. 2227, and 2245.

To Richard Cast, March 23, 1816, for 300 acres, parts of surveys Nos. 2227, and 2245.

To James Burdsall, March 22, 1816, for the whole of survey No. 2246.

These deeds cover all the lands in the three surveys.

The grantees and those claiming under them, by regular conveyances—the latter exceeding one hundred in number—have been in uninterrupted possession of the premises described in those deeds respectively from the dates of the several deeds, down to the time of the filing of the bill in this case. John Boyce as Executor, and McKinney with his wife as Executrix, at the October Term, 1824, of the County Court of Fayette County, Kentucky, settled their accounts, and charged themselves with the entire amount

of the proceeds of the sales of the lands, at the dates at which the payments were received.

At the time this settlement was made, three of the devisees, John, William and Daniel Boyce, were of full age. One of them, John, was the Executor. No objection was made to the account by any one.

The complainants have produced an authenticated transcript of the account of McKinney and wife as the guardians of Daniel, wherein he is credited with his share of the proceeds of the Ohio lands. This account was settled in the Fayette County Court at the October Term, 1820.

The complainants have produced also an authenticated transcript of the account of McKinney and wife, as the guardians of Caroline, wherein like credits appear in her credit.

This account was settled in the same Court, at the August Term, 1828. The three devisees who are living have answered. They all admit the receipt of moneys from their father's estate, but deny that they know anything of the circumstances of the sales of the Ohio lands, or ever intended to confirm them. Two of them Emily and Peggy, set up infancy and coverture at the times when their moneys were paid over.

William received $128 57 the balance of the amount due to him after he came of full age.

In October, 1846, a part of the defendants in this suit, instituted two actions of ejectment on the law side of this Court to recover the three surveys.

The causes were submitted to the Court at the October Term, 1851. Judgments were rendered in favor of the lessors of the plaintiffs. One of these cases is reported in 5 McLean, 322, Lessee of Dunlap and others *v.* Pyle and others.

The original bill in this case was filed in the Court of Common Pleas, of Clinton County, on the 2d of August,

1852. The amended bill was filed in the District Court of that County on the 10th of March, 1860.

The original and amended bills were answered by a part of the defendants. Others have not answered. All the non-resident defendants united in the petition to have the cause certified to this court. It was brought into this Court accordingly, pursuant to the 12th section of the Judicial act of Congress of 1789.

The complainants and those whom they represent seek to enjoin the judgments in ejectment and to be quieted in their possession.

They rely upon the following grounds:

1. That Elizabeth Boyce by her marriage with Gerard McKinney, became disqualified to act as Executrix under the will; that John Boyce became thereby the sole trustee under the will, and legal representative of the testator, and authorized to act *alone* as such—that the deeds executed by him passed the legal title to the grantees therein—that the parties now in possession hold that title by mesne conveyances, extending back to the original grantees, and, hence are entitled to the relief they seek.

In this aspect of the case, the bill is a bill of peace.

2. That if Elizabeth McKinney were not thus disqualified by her marriage, and the deeds of John Boyce did not convey the legal title, that those deeds and the other testimony in the case, show sales made by him—that those sales were ratified by Elizabeth McKinney, by the receipt and accounting for the purchase money by her as Executrix and guardian—that the case is one of a power defectively executed, and that those holding under the original grantees, are entitled to call on the devisees who are living, and the heirs of those who are deceased, for a specific execution of the contracts thus made and ratified.

3. That the statutes of limitations relied upon, have

barred the devisees living, and the heirs of those deceased, vested the legal title in the complainants and those whom they represent, and entitle the complainants to a decree of peace according to their prayer.

4. That the complainants and those whom they represent are too numerous—all to litigate as parties to the record—and that they have such a community of interests as entitles them to come together into a Court of Equity, as they have done, and there to have their rights ascertained and established by a common decree.

It is suggested in the original answer that the bill is defective by reason of multifariousness. The objection has not been made by demurrer. It was not pressed in the argument by the defendants' counsel. Indeed, it was in effect waived so far as the counsel were concerned, but it was suggested at the same time, that it might be entertained *sua sponte* by the Court.

In Whaley *v.* Dawson, 2 Shoales & Lefroy, 370–371, referring to this objection, Lord Redesdale said: "This can only be taken advantage of by demurrer, because if the defendant answers, the expense is in a great degree incurred, and it might be too late for him to complain if he suffered the case to go to a hearing."

In Ward *v.* Cooke, 5 Mad. 122, it was said by the Vice Chancellor that the objection must be taken by demurrer, and can not be made at the hearing.

In Wynne *v.* Callender, 1 Russ. 297, the Court took time to consider the point, and ruled it the same way.

In 4 Hare, 35, Benson *v.* Hadfield, the Vice Chancellor said:

"The objection of multifariousness is one which should be taken *in limine*. The defendant may be subjected to the expense of taking copies of the papers relating to matters in which he has no concern—and be kept before the

Court in the discussion of points in which he is not interested."

"If the defendant does not take the objection *in limine* the Court, considering the mischief already incurred, does not, except in a special case, allow it to prevail at the hearing."

1 Mylne & K. 546, Greenwood *v.* Churchill is to the same effect.

In Oliver *v.* Piatt, 3 How. 412, the rule is thus laid down by the Supreme Court of the United States:

"The objection of multifariousness can not as a matter of right, be taken advantage of except by demurrer, or plea, *or answer*, and if not so taken, it is deemed to be waived. It can not be insisted upon by the parties even at the hearing in the Court below, although it may at any time be taken by the Court *sua sponte*, wherever it is deemed by the Court necessary or proper to assist it in the due administration of justice.

"And, at so late a period as the hearing, so reluctant is the Court to countenance the objection, that, if it can get on in the cause to a final decree without serious embarrassment, it will do so, disregarding the fault or error, when it has been acquiesced in up to that time."

The words "or answer" as used in this passage, are, doubtless, a *lapsus*.

The proposition, which, in connection with the preceding part of the sentence they affirm, has no warrant in any authority which we have been able to find.

The object of the rule is to accelerate and cheapen litigation. If the objection appear on the face of the bill, it must be taken by demurrer. Mitford Eq. Pl., by Jeremy, 181 and note. Cooper's Eq. Pl., 182. Story's Eq. Pl., sec. 295.

If it exist, but do not appear on the face of the bill, it may be made by plea.

Jeremy's Mitford, 221; Beame's Pleas in Equity, 157–158; Story's, Eq. Pl., sec. 748.

In either case the point would be determined before the final hearing. If it may be made by the answer, it may as well be made *ore tenus*.

It could not be heard until the final hearing. If sustained, the time, labor and money expended in the preparation of the case, would be, in a great measure, lost to the parties.

In the light of these views and authorities we should be well warranted in declining to answer the objection in this case.

In consideration of the magnitude of the case, and the eminence of the counsel engaged, we prefer not to pass over so important a point in silence.

The complainants, and those represented by them, all claim under the will of William Boyce. They all insist upon the same construction of that part of the will to which they trace their titles.

They all claim under sales made by John Boyce, as Executor. They all claim that those sales were ratified by Elizabeth McKinney, the Executrix, by the receipt of the purchase money, and her accounting to the other devisees for their shares of it. They all rely on the same statutes of limitations. If one of the non-resident defendants is barred, all are. If one of the parties in possession is protected, all are. The decision of the case as to one of the parties, decides it as to all. The same legal questions and the same facts are common to all of them.

The uniting of all of the devisees who are living, and all the heirs of those who are dead, was indispensable. The

uniting of the complainants and those they represent, is convenient to the due administration of justice.

It will benefit all and can injure none. The rule as to parties in interest too numerous to be all made parties to the record, is thus laid down:

"Another exception to the general rule as to parties, is where they are exceedingly numerous, and it would be impracticable to join them without almost interminable delays and other inconveniencies, which would obstruct and probably defeat the purposes of justice. In such cases the Court will not insist on their being made parties, but will dispense with them and proceed to a decree, if it can be done without injury to the person not actually before the Court." Story's Eq. Pl., sec. 94.

"The exception is allowed when they are very numerous, and although they have or may have separate and distinct interests, and yet it is impossible to bring them all before the Court." Id. sec. 97.

"In this class of cases there is usually a privity of interest between the parties—but such a privity is not the foundation of the exception—on the contrary, it is sustained, in some cases where no such privity exists. However, there always exists in all of them a common right which the bill seeks to establish, or narrow or take away." Id. sec. 120. These propositions are fully sustained by authority. 2 Mason, 193, West *v.* Randall and others; 3 Mason, 18, Wood *v.* Dummer; 11 Vesey, 429, Adair *v.* The New River Co.; 13 Id. 397, Good *v.* Blewitt; 16 Id. 321, Cockburn *v.* Thompson; 1 J. C. R. 329, Wendell *v.* Van Rensalear; 3 J. C. R. 553, Brown *v.* Ricketts; 1 Atkins, 282, Mayor of York *v.* Pitkengton.

Upon the subject of multifariousness in 2 Howard, 642, Gaines and wife *v.* Chew and others, the Court said:

"It is well remarked by Lord Cottingham in Campbell *v.* McKay, 7 Simon, 564, and in 1 Milne & Craig, 603, 'to lay down any rule applicable universally, or to say what constitutes multifariousness as an abstract proposition, is upon the authorities utterly impossible. Every case must be governed by its own circumstances, and as these are as diversified as the names of the parties, the Court must exercise some discretion on the subject. While parties should not be subjected to expense and inconvenience in litigating matters in which they have no interest, multiplicity of suits should be avoided, by uniting all in one bill who have an interest in the principal matter in controversy although the interest may have arisen under distinct contracts.'"

In Parberry's heirs and others *v.* Gorham, 3 Bibb, 109, Harveston had sold land to Parberry, and authorized an agent to convey it. No conveyance was executed. Parberry sold and conveyed to others. "After many years possession it being discovered that Harveston's agent had not conveyed to Parberry, the holders of the land together with some of the intermediate purchasers filed a bill *v.* Harveston and the heirs of Parberry, to obtain a conveyance from Harveston to each of those who are entitled." The Court of Appeals said: "Relief is primarily and principally sought against Harveston, whose contract with Parberry forms a common *medium* through which the rights of all the complainants are derived and upon which they all depend."

The bill was sustained.

In Tilford *v.* Henderson, 1 A. K. Marshall, 483, the case in Bibb was approved and followed, and the same principle applied. The Court say: "That as a general proposition several plaintiffs claiming distinct rights, are not permitted to unite in the same suit—certainly can not

be controverted, but the application of the rule has never been made to that description of cases where the rights asserted, though for several portions of the thing in contest grew out of, and depended upon, the same original equity, the validity whereof is involved in the issue between the parties." Scrimger *v.* Buchanan, 3 A. K. Marshall, 219, is to the same effect. See also, Brinkerhoof *v.* Brown, 6 J. C. R. 139; Fellon *v.* Fellon, 4 Cow. 682; Ward *v.* Duke of Northumberland, 2 Ans. 469. We think this case falls within these authorities, We can imagine no case more proper for the application of the principles they maintain.

If this objection had been presented by demurrer or plea, we should have held it untenable. This brings us to the examination of the case upon its merits.

The ground of relief most earnestly insisted upon by the counsel for the complainants was the statutory limitations.

Their propositions upon the subject were met by the counter propositions from the other side, that the whole subject is *res judicata*, and concluded by the judgments in ejectment.

It is undoubtedly true, as a general proposition, that where there is no defect of jurisdiction, what has been determined in one litigation, can not, as between the same parties and those claiming under them, be questioned in another. Such is the result, whatever the form or object of the litigation in either case.

3 Barb. C. R. 340, Kingsland *v.* Spaulding; 3 Paige, 463, Orcutt *v.* Orms; 2 Seld. 139, White *v.* Coatsworth; 3 Comst. 522, Embury *v.* Conner; 13 Barb. S. C. R. 101, Baker *v.* Rand; 1 J. C. R. 91, Simpson *v.* Hart; Id. 543, Geltson *v*, Hoyt.

This is a universal principle of civilized jurisprudence.

But in our law a judgment in ejectment forms an exception to the rule. In Atkins *v.* Hord and others, 1 Bur-

rows, 119, Lord Mansfield thus characterized it: "Then in truth and in substance a judgment in ejectment is a recovery of the possession, and of the seizin or freehold without prejudice to the right as it may afterwards appear *even between the parties.* He who enters under it can only be possessed according to right, *pro lex postulat.* If he has a freehold, he is in as a freeholder. If he has a chattel interest, he is in as a termor. And, in respect of the freeholder, his possession enures according to right. If he has no title, he is in as a trespasser, and without entry by the true owner, is liable to account for the profits."

In Jackson *v.* Dieffendorfer, 3 J. R, 270, the Court adopted this definition, and added: "if he had no right to the possession, then he takes only *a naked possession.* This is the obvious and established construction of the nature and effect of a judgment in ejectment."

The lessor of the plaintiff acquires no new right or title by the judgment. The action is a fiction. The judgment is for the unexpired term stated in the declaration. It is no bar to another action for the same premises, and can not be given in evidence in such action.

Tillinghast Adams, 327; 4 Bouv. Inst. 3651; 2 Scammon, 252, Chapman *v.* Armstead; 4 Mumford, 382, Mercer *v.* Watson; 1 Watts, 330, Maxwell *v.* King; 3 Yeiger, 460, Smith *v.* Sherwood; 4 Conn., Betts *v.* Sheds'heirs; 3 Littell, 336; 2 Burr, 667, Austin *v.* Parker.

Such was the action of ejectment by the common law. Such it is still, except where it has been modified by local statutes. Such it was when these judgments were rendered. Such it still is, in this Court. Sitting as a Court of Equity we can not give these judgments any greater effect than they would have in another action of ejectment between the same parties.

Here equity follows the law.

The law giving these qualities to the judgment is a rule of property. The rules of property are the same in law and equity. The remedies are different. Together, they form a harmonious system. "The creation and transmission of estates must be governed by the same law in both Courts."

Bridges *v.* The Duchess of Chandos, 2 Vesey, 457; Walton *v.* Walton, 7 J. C. R. 270.

The only authority in conflict with these views to which our attention has been called, is the case of Van Wick *v.* Seward, 1 Ed. C. R. 327. That case stands alone. Its doctrine upon this point was expressly overruled by the Chancellor in the same case on appeal, (6 Paige, 65), and in the same case in the Court of Errors, (18 Wend., 377, Chief Justice Bronson's opinion). There, as here, a judgment in ejectment was relied on as a bar to a suit in chancery. The object of both suits, was to reach property conveyed by a debtor—as was alleged—to defraud his creditors. The property was the same and the questions were the same in both cases. The views of the Chancellor and the Chief Justice, were in accordance with those we have expressed. The latter seemed to think it necessary to apologize for adverting to such a proposition.

We are, therefore, enabled to examine the questions arising under the several statutes of limitations ruled upon, without obstruction from the judgments in ejectment.

The act of January 25, 1810, 1 Chase, 655, sec. 2: "No person or persons shall hereafter sue, have or maintain, any writ of ejectment, or other action for the recovery of the possession, title or claim of, to or for any lands, tenements, or other hereditament, but within twenty-one years next after the right of such action or suits shall have accrued: Provided, that if any person or persons who are, or shall be entitled to have, sue or bring any suits, action

or actions as aforesaid, shall be within the age of twenty-one years, insane, feme coverts, imprisoned, or beyond sea, at the time any such suits, action or actions may or shall have accrued; then every such person or persons shall have the right to have, sue, or bring any action or actions, afore-said, within the time hereby before limited in this act, after such disability shall have been removed.'"

The disability "*beyond sea*" in this statute, means out of the State.

Richardson *v.* Richardson, 6 O. Rep. 125; West *v.* Peckesimer, 7 Id. pt. 2, 235; Whitney *v.* Webb, 10 Id. 524.

It was maintained with learning and ability in the argument for the complainants that *these terms, mean out of the United States*, and we were pressed to adopt that construction.

It is beyond our power to do so. The statutes of limitations of the State are "rules of decision" in this Court, under the 34th section of the judicial act of Congress of 1789.

McClung *v.* Silliman, 3 Peters, 270; Green *v.* Neal, Lessee, 6 Ibid, 291; Ross *v.* Duval, 13 Ibid, 45; Shelby *v.* Gay, 11 Wheat. 361.

The settled construction of a State statute by the Supreme Court of the State, is regarded in the Courts of the United States as a part of the statute.

Massingall *v.* Downs, 7 How. 767; Nesmith *v.* Sheldon, bid. 812; Van Renselaer *v.* Kearney, 11 Ibid. 297; Webster *v.* Cooper, 14 Ibid. 504.

If the Supreme Court of the State shall hereafter overrule the subsisting adjudication, it will be the duty of this Court to follow the overruling judgment. In the meantime, it is our duty, whatever our views might be, if the

question were an open one, to give effect to the established construction.

The act of February 25, 1824, 2 Chase, 1402, sec. 1: "All actions hereinafter mentioned shall be commenced within the several times hereinafter limited, after the cause of such action shall have accrued, and not after. First, actions of ejectment, or any other action for the recovery of the title or possession of lands, tenements or hereditaments, within twenty-one years."

"SEC. 2. That if any person who shall be entitled to have or commence any action of ejectment, for the recovery of the title, or possession of lands, tenements or hereditaments, shall be within the age of twenty-one years, insane, feme covert, imprisoned, or without the United States, and territories thereof, at the time such cause of action shall have accrued; every such person shall have a right to commence any action within the time herein before limited, after such disability shall be removed."

This act drops the disability "beyond sea." It was not resumed in any subsequent act. Like the act of 1810, it allows the full time originally limited, for bringing the action after the removal of the disability. It repealed the act of 1810, with a saving so far as that act was concerned, *only* as to causes of action already barred by it. There was a *hiatus* left, as to causes of action which occurred while it was in force, and had not been barred at the time of its repeal.

The act of February 8, 1826. Preamble. "Whereas, doubts have arisen whether the act entitled an act for the limitation of actions, passed the twenty-fifth of February, eighteen hundred and twenty-four, does not suspend the operation of all former acts, for the limitation of actions on all causes of actions, not barred by such former acts, prior

to the twenty-fifth day of February, eighteen hundred and twenty-four therefore to remove those doubts"

SEC. 1. "Be it enacted," etc. This section provides that all actions limited by the act of 1810, "the causes of which accrued during the time that act was in force," and all actions limited by the act of 1804, "the causes of which accrued during the time that act was in force," "shall be commenced within the times limited by those several acts and not after."

SEC. 2. "That for the limitation of all actions the causes of which may have accrued before the 25th day of February, 1824, and the 25th day of January, 1810, the act entitled 'an act for the limitation of actions,' passed January 25, 1810, shall be, and the same is hereby revived and in force, but for no other purpose whatever."

This restored the act of 1810, as to all causes of action which accrued while it was in force, and had not been barred at the time of its repeal.

We think that to this extent it restored the *entire act*, its savings as well as its limitations. This view of the subject is strengthened by the last proviso of the act of 1831, and the act of 1846, hereafter to be adverted to. We think this proposition too clear to require discussion.

The act of February 22, 1830, 3 Chase, 1654: SEC. 1. "If any person entitled to have or maintain any action of ejectment for the recovery of the title, or possession of any lands, tenements or hereditaments, be at the time his right or title first descended or accrued to the same, within the age of twenty-one years, feme covert, insane or imprisoned, every such person may, after the expiration of twenty-one years from the time his right or title first descended or accrued, bring such action within ten years after such disability removed, and at no time thereafter."

SEC. 4. "The second section, and so much of the fourth section of the act for the limitations of actions, passed February twenty-fifth, in the year eighteen hundred and twenty four, as is contrary to the provisions of this act, shall be, and the same are hereby repealed: Provided, That in all cases, where the person entitled to have or maintain any action of ejectment as aforesaid, shall have been subject to any of the disabilities aforesaid, but which shall have been removed at any time not exceeding eleven years prior to the taking effect of this act; every such person may bring such action within ten years after the taking effect of this act; but if such disability shall have ceased, or been removed more than eleven, and not exceeding twenty-one years prior to the taking effect of this act, then such person, so disabled as aforesaid, shall have the liberty of bringing such action within such time after the taking effect of this act, as being added to the excess of time over eleven years, as aforesaid, will be equal to ten years and no more."

These provisions were re-enacted by the act of 1831, with an important additional provision. What we shall say as to the act of 1831, except in respect of the additional provision, will apply to this act, and need not be here anticipated.

The act of Feb. 18, 1831, 3 Chase, 1768:

SEC. 1. "All actions hereinafter mentioned shall be commenced within the several times hereinafter limited after the cause of such action shall have accrued, and not after."

"First—Actions of ejectments, or any other action for the recovery of the title, or possession of lands, tenements or hereditaments, within twenty-one years."

SEC. 2. "If any person, entitled to have or maintain any action of ejectment, for the recovery of the title, or possession of any lands, tenements or hereditaments, be, at the time his right or title first descended or accrued,

within the age of twenty-one years, feme covert, insane, or imprisoned; any such person may, after the expiration of twenty-one years from the time his right or title first descended or accrued, bring such action within ten years after such disability removed and at no time thereafter."

SEC. 3. "In all cases where the person entitled to have or maintain any action of ejectment as aforesaid, shall have been subject to the disabilities aforesaid, but which shal have been removed at any time not exceeding eleven year prior to the first of June, eighteen hundred and thirty; every such person may bring such action within ten years thereafter, but if such disability shall have ceased, or been removed more than eleven, and not exceeding twenty-one years, prior to said first of June, eighteen hundred and thirty, then such person shall have the liberty of bringing such actions within such times after the said first of June eighteen hundred and thirty, as being added to the excess of time over eleven years as aforesaid, will be equal to ten years and no more."

SEC. 8. "The act, entitled 'an act for the limitation of actions', passed February twenty-fifth, eighteen hundred and twenty-four; an act supplementary to the act entitled 'an act for the limitation of actions', passed February eighth, eighteen hundred and twenty-six; and 'an act to amend the act entitled an act for the limitation of actions,' passed February twenty-second, eighteen hundred and thirty: and all acts and parts of acts heretofore passed for the limitation of actions, be, and the same are hereby repealed; Provided, that all causes of action not heretofore barred, which *subsisted* or accrued during the time those acts were in force, shall be commenced within the times therein limited and not after; and all such actions shall be barred after the expiration of the several times allowed for their commencement, according to the provisions of said acts re-

spectively, and their amendments. This act to take effect and be in force from and after the first day of June next."

The 2d section provides for two classes of cases (1), those which should arise thereafter; (2), those where the disability subsisted at the time of the passage of the act. In either case, the action, if brought after 21 years from the time the cause of action accrued, must be brought within ten years after the removal of the disability.

The language: "*from the time his right or title first descended or accrued,*" was, evidently, copied from that part of the English statutes of Henry the 8th and James the 1st, which relates to tolling the entry of the heir, and is here confused with that which relates to barring an action after disseizin. Of course, it was not intended that the statute should run before there was ouster and adverse possession. The meaning must be held to be the same as if the terms used had been "*at the time the causes of action first accrued.*"

There is a like error in the Pennsylvania statute. The Supreme Court of that State say: "But though it is easily understood, it is not because in the construction of it any attention was had to grammar; or any care shown to avoid unnecessary, and, in that place, unmeaning words; but it shows clearly enough that this statute does not affect a man in possession until some one enters upon him under an adverse claim."

1 Penna. R. 8, Carlisle *et al. v.* Stitter; See also, 2 Hill, 381, Theriat *v.* Hart.

The time referred to in the 3d section is the time when the act of 1830 took effect.

This section also provides for two classes of cases. Both are where the disability had ceased to exist before the 1st of June, 1830.

1. In the first class, the party was entitled, in any event to ten years after the 1st of June, 1830, and after the removal of the disability within which to sue. He might have altogether twenty-one years after the removal of the disability—or he might have but ten years and a day.

In the 2d class, he might have twenty-one years after the removal of the disability, but he might have only a day of the time after the 1st June, 1830.

If the disability subsisted on the 1st of June, 1830, or the cause of action accrued after this act took effect, the first section would apply. If the case fell within neither of the catagories stated—it was left to the operation of other acts.

This important proviso in the last section, came under the consideration of the Supreme Court of this State, at the last term, in Walker and others *v.* Knight, 12 O. S. R. 209.

It was unanimously held that causes of action which accrued prior to the act of 1830, "are governed by the statutes of limitation in force while they subsisted" as well as by those in force when such causes of action "accrued," and "that all persons whose right of action for the recovery of real property accrued, while under disability prior to the act of 1830, and whose disability ceased subsequent to the taking effect of that act, are limited by the term of ten years after disability removed."

The Court distinguished or overruled the previous cases of Bigelow *v.* Bigelow, 6 O. Rep. 96; Hazelett *v.* Critchfield, 7 O. R. 497; Putnam *v.* Rees, 12 O. R. 21, and Cary *v.* Robinson, 13 O. Rep. 181. The opinion is luminous and able.

We are urged to disregard this judgment as erroneous, and to follow the previous rulings. Our views upon that subject have been already expressed.

We refer to the following additional authorities. Bank of the U. S. *v.* Daniels, 12 Peters, 32; Harpending *v.* The Dutch Church, 16 Peters, 493. In the case last named, Mr. Justice Catron said: "We are bound to conform to the decision of the State Courts of New York, in the construction of their statutes of limitation. Such is the settled doctrine of this Court."

The act of January 28, 1832, Curwen, 1255:

This act repeals the saving "beyond sea" "in any act heretofore passed and now in force." It did not take effect, "as to causes of action which have already accrued," until the 4th July, 1847.

The only acts ever passed which contained this saving, were the acts of 1804, and 1810.

These are all the statutes which bear upon the subject under consideration.

The disabilities named in the statutes apply only to the party subject to them when the cause of action accrues. They are not recognized in the heirs of such persons.

Stowel *v.* Zouch, 1 Plow. 375; Thompson, *v.* Smith, 7 S. and R. 209; Griswold *v* Bullen, 3 Com. 227; Jackson *v.* Livingston, 15 J. R. 169; Jackson *v.* Swartout, 5 Cow. 101; Whitney *v.* Webb, 10 O. R. 517.

Where there are several co-existing liabilities in the same person, when the right of action accrues, he need not sue until all are removed. Wood *v.* Aiken, 2 Page, 616; Stowel *v.* Zouch, 2 Plow, 375; Bruce *v.* Walcott, 2 Conn. 34; Angel on Lim. 209.

But "cumulative" or "successive disabilities" are not allowed. One disability can not be added to, or merged in another. Where infancy subsists when the cause of action accrues, and the infant marries during non-age, the stat-

utes begin to run when the infancy terminates. The coverture is not taken into the account.

Whitney *v.* Webb, 10 O. R. 513; Cary's adm'r. *v.* Robinson, 13 Ib. 181; Mercer *v.* Selden, 1 How. 37; Gregg *v.* Sayre, 8 Peters, 244; Eager *v.* the Commonwealth, 4 Mass. 182; Griswold *v.* Butler, 3 Conn. 227; Damarest *v.* Winekoop, 3 J. C. R. 129.

When the statute begins to run it runs on until the bar is complete, unless restrained by some legislative provision.

2 Green, 294, Dekay *v.* Darrah; 13 J. R. 513, Jackson *v.* Moore; 6 Cushman, (Miss.), 145, Byrd *v.* Byrd; 1 Willson, 134, Smith *v.* Clark; 3 Hill, 85, Fleming *v.* Griswold; 1 Penna. 6, Rankin *v.* Tenbrook; 1 How. 37, Mercer *v.* Selden.

The bar of the statute in respect of real estate, does not merely take away the remedy; it extinguishes the right, and vests a complete legal title against all the world in the adverse possessor.

1 Burrows, 119, Atkins *v.* Hord; 4 Ohio State Rep. 225, Thompson *v.* Green; 5 Maryland, 256, Armstrong *v.* Resteaud; 29 Penn. 26, Moore *v.* Luce; 5 S. & R. 236, Pedrick *v.* Searle; 4 U. & S. 32, Bell *v.* Hartley; 13 Conn. 227, School D. *v.* Blakste; 1 Meigs, 207, Whiteside *v.* Stughton; 13 J. R. 229, Jackson *v.* Haveland; 8 O. R. Jackson *v.* Otto; 1 L. Ray, 740, Stoken *v.* Birney; 7 Ferw. 488, Barwick *v.* Thompson; 17 Vesey, 88, Beckford *v.* Wade.

When the legal estate of the trustee is barred—*cestui que trust* is barred also.

1 Peck, 324, Furguson *v.* Kennedy; 1 Burrows, 119, Atkins *v.* Hord; 2 Salttilo, 421; 2 Barr, 52, Smiley *v.* Biffle; 3 Perritt, 309, Wych *v.* E. I. Co.; 2 Eq. Ca. ab. 579;

Lewellyn *v.* Mackworth; 2 Sch. & Lef. 629, Hovenden *v.* Lord Amesley.

The same time that bars the claim to a legal estate at law, bars the claim to an equitable estate in equity.

2 Jacobs & Walker, 1, Chalmondly *v.* Clinton; 10 O. R., Rialy *v.* Hilman; 2 Sch. & Lef. 629, Hovenden *v.* Ld. Amesley.

The effect of statutes of limitations is the same in equity as at law.

3 Bro. C. R. 630, Smith *v.* Clay; 2 I. & W., Chalmondly *v.* Clinton; 7 J. C. R. 90, Kane *v.* Bloodgood; 2 Sch. & Lef. 629, Hovenden *v.* Lord Amesley; 12 Pet. 56, Bk. U. S. *v.* Daniel; 10 Pet. 177, Boon *v.* Chiles; 16 Pet. 416, Piatt *v.* Vattier; 4 Hill, 71, People *v.* Everett; 9 Mass. 242, Varmmay *v.* Brooks; 3 J. C. R. 129, Damarest *v.* Winekoop.

Statutes of limitations are now favorably considered in all Courts. They are regarded as statutes of repose. 5 Pet. 470, Lewis *v.* Marshall; Ib. 457, Hawkins *v.* Barney's Lessee; 3 Brod. & B. 217, Tolson *v.* Kaze; 13 How. 472, Roberts *v.* Pillow.

It remains to examine the case of each of the devisees.

The latest period from which the computation of the adverse possession can be made, is the 23d of March, 1816. The actions of ejectment were commenced in October, 1846.

1. John Boyce, the Executor.

He is admitted to have been in Ohio when the adverse possession commenced. He was under no disability. He was consequently barred under the act of 1810, as early as the 24th of March, 1836. There was no re-

covery of his individual share in the judgments in ejectment.

2. William Boyce.

He was born May 5, 1796, and came of age May 5, 1817, more than eleven years before the 1st of June, 1830. He became barred under the 3d section of the act of 1831, on the 6th of May, 1838.

3. Daniel. He was born on the 9th of August, 1803, came of age on the 9th of August, 1824, and died on the 4th of November, 1835.

4. Emily. She was born Dec. 18, 1804, and came of age Dec. 18, 1825. She was married April 30, 1822.

5. Peggy. She was born on the 10th of January, 1806. She came of age on the 10th January 1827. She was married on the 1st of November, 1826.

6. Caroline. She was born on the 10th of October, 1808, and came of age on the 10th of October, 1829. She married January 1, 1829, and died on the 21st of September, 1833.

The last four named devisees having all arrived at age within eleven years before the 1st of June, 1830, the bar was complete, as to those who are living, and as to the shares of those who are dead, under the 4th section of the act of 1831, on the 1st of June, 1840.

7. Elizabeth McKinney, the widow. Her case is different from that of either of the other devisees. She was under the disability of coverture when the cause of action

accrued. Her husband, Gerard McKinney, conveyed his life estate by the deeds executed by John Boyce and himself to the original purchasers. That estate, may, therefore, be laid out of view, otherwise, the statute could not have commenced running until his death.

4 O. S. Rep. 216, Thompson *v.* Green; 1 Black, (S. C. U. S.,) 150, Gregg *v.* Fesson. Unlike the English statutes of Henry the 8th, James the 1st and William the 4th, and most of the American statutes, the Ohio statutes are silent as to heirs, hence, at one time, during our examination of this branch of the case, we had strong doubts as to the rule to be applied.

4 Yerger, 252, Guion *v.* Bradley Academy; 16 Alb. Prior *v.* Ruebonn; 1 Cow. 357, Sacia *v.* De Graff; 20 Pick. 2, Hall v. Brumstead; Angel on Lim. 204, 205, 218; 2 Rhode Island, 440, Clark *v.* Crap; 17 Vesey, 87, Beckford *v.* Wade; 10 O. R. 522, Whitney *v.* Webb *et al.*; 13 Ibid. 195, Carey's Adm'r. *v.* Robinson's Adm'r.

That doubt was removed by Ford's Lessee *v.* Langel and others, 4 O. S. Rep. 466.

In that case the Court say:

"*The grantee or heir* of one protected from the operation of the statutory bar, is entitled to the full benefit of that protection, and may bring a suit within the same time and to the same effect as though no change of ownership had occurred."

According to this ruling, the heirs of Elizabeth McKinney, became barred at the expiration of ten years from the termination of her coverture by her death. The ten years expired on the 22d of June, 1843.

These conclusions have rendered it unnecessary for us to examine the other questions relating to the merits, which were so fully and ably argued.

We will now consider the remedy.

The bill sets out facts, which show that by virtue of the statutes of limitation which apply to the case, the legal title is in the complainants and those whom they represent. This is sufficient as to that point.

Buchanan *v.* Roy's Lessee, 2 O. S. R. 267. It was admitted by the complainant's counsel that according to the English Equity practice, a party can not bring a bill to quiet merely his own title and possession, without first establishing his right at law. This is undoubtedly so. 2 Watt, Ed. Notes, p 422.

Here, the result of the trial at law has been adverse to the complainants. It is supposed this difficulty is obviated by the State statutes which dispenses with the necessity of a preliminary judgment at law, and gives to any one holding the legal title, the right to file such a bill.

But there is a serious question as to the application of that statute in this Court.

The equity jurisdiction of this tribunal, is derived from the judicial act of 1789. Its powers and practice are those of the English Equity system. They are the same in all the States. 9 Peters, 632, Livingston *v.* Strong; 13 Ohio, 339, S. Co.; 12 Ibid. 432, Poultney *v.* the city of Lafayette; 13 Ibid. 404, *Exparte* Whitney; 15 Ibid., Gaines *v.* Rely; 2 How. 619, Gaines *v.* Chew.

The practice and modes of proceeding can be changed only by rules made by the Supreme or Circuit Courts; a State statute unless adopted by such rule can not affect them. 6 Peters, 658, Boyle *v.* Zachery; 7 Ibid. 252, Hind *v.* Vattier; 3 Wheat. 221, Robinson *v.* Campbell, 4 Ib. 108, U. S. *v.* Howland; 11 How'd. 669, Bennett *v.* Butterworth; 13 Ibid. 268, Neves *v.* Scott. Much consideration is due to the fact that this case was brought here from a State Court.

There the statute applied, and this objection did not ex-

ist. The difficulty, may, perhaps, be surmounted by holding that the statute like the statutes of limitation, affects the rights as well as the remedy. 3 Wheat. 221, Robinson *v.* Campbell; 13 How. 273, Neves *et al. v.* Scott, *et al.*

But it is unnecessary to pursue this subject further, because there is a head of equity jurisdiction under which, without doubt, we can give the relief sought. We refer to that relating to "the numerousness of parties, and the prevention of a multiplicity of suits."

In the cases which belong to it, it is not necessary that a trial at law should precede the filing of the bill, and it is within the discretion of the Chancellor, to order or not such a trial.

1 Atk. 283, Mayor of York *v.* Pitkington; 1 Young & J. 164, Powell *v.* Powis and Nole; 2 Atk. 483; 1 J. C. R. 166, Nicol *v.* Trustees, etc.; 1 Vernon, 261, E. Welme Hospital *v.* Andover; 2 Waterman's Eden—note to page 414.

The rule as to such orders is thus laid down by Chancellor Kent:

"It is the practice and undoubted jurisdiction of the Court to decide on the facts as well as the law, and the awarding of an issue rests in sound discretion. It would be an abuse of that discretion, and the creation of a great and unnecessary expense, to award an issue when the truth of the facts could be sufficiently ascertained by the Court itself. Dale *v.* Roosevelt, 6 J. C. R. 257.

Here, the facts are all admitted. A trial at law could in no wise affect the result. We have the power, and it is our duty to proceed at once to a final decree.

In the argument at bar, we were told on the one hand, that the land in controversy is of very great value—that there is a rising village upon it, and that a great number of persons are deeply interested in the result of the suit.

On the other hand, we were earnestly reminded of the jealous policy of the constitution and legislation, which called this court into existance—that the parties entitled to come here, might find in it, a *forum* free from the prejudices and sympathies of a State tribunal.

Our duty is to hold the scales of justice with a steady hand, and to allow nothing to weigh in either that does not properly belong there.

In that spirit we have endeavored to discharge the obligation resting upon us in this case. We are happy to know, that if we have erred, there is a higher tribunal where the defendants can have our errors corrected, and the complainants can again be heard upon the questions which we have not found it necessary to consider.

The complainants are entitled to a decree in conformity to the views we have expressed.

SUPREME COURT UNITED STATES.

BOYCE'S DEVISEES and others, Appellants,
vs.
HADLEY and others, Appellees,
} *Chancery.*

BRIEF FOR APPELLANTS,

BY

G. ROBERTSON.

LEXINGTON, KY.
OBSERVER & REPORTER PRINTING COMPANY.
1865.

SUPREME COURT UNITED STATES.

BOYCE'S DEVISEES and others, *Appellants*,
vs.
HADLEY and others, *Appellees*,
} CHANCERY.

This appeal presents for revision a singular Decree in an extraordinary litigation, vexatiously prolonged by unprecedented means.

WILLIAM BOYCE, who had served as an officer in the American army during our Revolutionary war, holding, at his death, the undisputed title to 2,666⅔ acres of land in Clinton county, Ohio, granted to him for his military services, published a Will, and died on the 16th of January, 1812, in Fayette county, Kentucky.

The Will, proved and recorded in the County Court of Fayette at its February term, 1812, after declaring that he had advanced to his elder and married children all he intended to give them, made the following disposition of his entire estate: "As my estate lies in various parts of the world, and 'of various descriptions of property, so that I can not make 'equal distribution in my Will among the rest of my children 'who have not as yet received their patrimony by pointing 'out to each their different kinds of property, in order to do 'equal justice to them and my loving wife, I give and be-'queath every part of my estate, of every kind whatsoever, 'to be equally divided, by sale or otherwise as may seem 'best, between my loving wife and my children not hereto-'fore named and their heirs forever, having particular regard 'to the education of any not yet educated." He then nominated his surviving wife, Elizabeth, Executrix, and his sons John and William, and his son-in-law Thomas Wren, Executors, and provided for a fair compensation to *Wren*, if he should faithfully serve until his whole estate should be settled.

At the time of probate, all the devisees, except the widow and the said John, were infants, and consisted of the following children: William, Daniel, Emily, Peggy and Caroline, born at the following periods: William the 5th of May, 1796; Daniel the 9th of August, 1803; Emily the 18th of December, 1804; Peggy the 10th of January, 1806, and Caroline the 10th

of October, 1808—and Emily was married to John R. Dunlap, April 30th, 1822; Peggy to Levi Prewitt the 1st of November, 1826, and Caroline to William Shrieve the 1st of January, 1829.

The widow and John Boyce were qualified as Executrix and Executor, and neither of the other nominees appears to have either acted or renounced. After her qualification, and about seven months only after the Testator's death, his widow married Gerrard McKinney, who seems to have assumed to act in her place as fiduciary, and thus, presuming on marital power and arrogating representative authority, went to Ohio in the spring of the year 1813, and then and afterwards sold to John Hadley and others, in several parcels, the whole of the Testator's land in Clinton county, and made conveyances of it, all signed "Gerrard McKinney and Elizabeth his wife, Executrix, and John Boyce, Executor." And, as to her, signed and acknowledged by her husband only—she, as indisputably proved, never having been in the State of Ohio during her life, which closed in death on the 22d of June, 1833, he surviving.

Under those spurious purchases, the vendees entered, as agreed, about the 1st of January, 1816; and that possession has been retained by them and their successors ever since.

Mrs. McKinney left several infant children by her last husband who inherited her estate derived from her first husband, and Caroline Shrieve died childless and without any other heirs than her surviving co-devisees.

In October, 1846, an action of Ejectment was brought in the Circuit Court of the United States at Columbus, Ohio, by the surviving devisees and the heirs of the deceased devisees to recover the land in Clinton county embraced in Boyce's Will. The occupants, claiming under the conveyances from John Boyce and McKinney, entered into the consent rule and pleaded not guilty. After elaborate preparation by the defendants for proving a statutary bar, aud also a confirmation of the sales and conveyances by the acceptance of the consideration, the law and the facts were, by consent, submitted to the decision of the Court on written arguments. On that submission, waiving a jury, the court, at its October term, 1851, rendered a judgment against the defendants for all the land, except two-sevenths which were the portions of John Boyce, who was estopped by his deeds, and also barred by the statute of limitations, and of Daniel Boyce, who was not a party. That judgment was sustained by a full opinion adjudging that the Executors had no testamentary power to sell,—that, if they had, the sale, as made, was illegal and void,—that, as to the non-resident lessors, including all except

the said John, the statute of limitations had not barred the action, and virtually also that there had been no confirmation of the void conveyances. The opinion, as reported in 5th McClean's C. C. Repts., 322, concludes as follows: "If there are 'any *equitable* circumstances arising out of the *application of* 'the *money* for which the lands were sold, or *on other grounds* 'they can not be considered in this case." And the following entry was subjoined to the judgment. "And the defend-'ants, by their counsel, give notice that they will claim com-'pensation for their improvements under the occupying 'claimant law, and they ask the Court to suspend the Execu-'tion until they shall be able to file their Bill to investigate 'matters of Equity against the lessors of the Plaintiffs. And 'the Court orders writs of possession to be suspended until 'the next term."

That suspension was evidently made by the Court for the sole purpose of allowing the defendants until the next term to proceed with their assessment of improvements, rents, &c., and claim a lien for the consideration. The Court would never, on mere motion, have suspended Execution to give time to file a Bill for revising its judgment enjoining the inforcement of it for alleged error. The successful party, so understanding the purpose of suspension, patiently awaited the proposed procedure. But, nevertheless, the same parties who had fully defended the Ejectment and, on a claim for improvements, had procured the suspension, filed *a Bill in chancery in the Court of Common Pleas for Clinton county, Ohio, which, after referring to and describing the judgment, sought to revise and enjoin it on grounds which it had concluded*, and, instead of asking for any assessment of improvements, prayed only for a specifie execution of an alleged executory contract by the Executors of W. Boyce,—for the completion of a pretended defective execution of a pretended power in them to sell,—for a release by the lessors of their legal title, and for a perpetual Injunction against their judgment for eviction.

The Bill was filed by Hadley and Pile for themselves, and, as it alleges, for more than one hundred others claiming different portions of the land sold by McKinney and Boyce. As the foundation of the asserted confirmation of their sales and conveyances it exhibits from the record of the action of Ejectment, a settlement made *exparte* in the County Court of Fayette of the Executorial accounts, in which the Executors were charged with the money received from those sales, and a subsequent settlement, of the like kind, made with McKinney and wife as guardians of the infant female devisees, which allowed those guardians credit for payment to their

wards, during their infancy and coverture, of their respective portions of that fund.

The Bill was filed in August, 1852, and, to afford a semblance of jurisdiction against the lessors, all non-residents of Ohio and not subject to personal citation, it made a resident, *W. T. Tong*, an ostensible defendant, *although his interest was antagonistic to that of his co-defendants.*

At the first term after the filing of the Bill, the Appellants made, in proper time and mode, a motion to translate the case to the Federal Court which had rendered the judgment. That motion was overruled, and the Appellants demurred to the petition, and not waiving the demurrer, also answered the Bill. But the Court adjudged that the equitable title was in the Complainants (now Appellees), and decreed a release to them of the legal title and *a perpetual Injunction against the Judgment of the Federal Court!*

On an appeal to the State District Court the case was adjourned to the Supreme Court of the State for the alledged reason that the questions involved in the motion, in the Demurrer and in the offer to file an amended Petition, were important and difficult. And, in that attitude, the case was transmitted by the Supreme Court to the Court of the United States as the only tribunal that had jurisdiction over it.

After the translation, the said amended Bill was suffered to be filed; and the Appellants demurred, and also answered substantially as they had done to the original Bill.

The amended Bill, departing altogether from the original, sought a revision and reversal of the judgment which had been rendered by the same Court, but not by the same Judges,—Justice *McLean* having, in the meantime, been succeeded by Justice *Swayne*. It alleged that, notwithstanding that judgment to the contrary, the legal title was in the Complainants on two grounds: 1st, the conveyances by McKinney and John Boyce, which had been pronounced void by the same Court; and 2d, an undisturbed possession for more than twenty-one years, whereby, as claimed, the fee simple title had become invested in them: and therefore, under a statute of Ohio authorising a Bill *quia timet* by owners of the legal title in possession to obtain repose against all conflicting claimants of the land so owned and occupied, they prayed for a release and a *perpetuation of the Injunction* against the judgment of eviction.

The answer, claiming the benefit of a demurrer, denied that the Executors had any authority to sell or convey,—insisted that the sales and conveyances, as made, were void,—refused to admit that McKinney was an agent of his wife as Executrix in making the sales or in receiving the consideration, or

that she ever received or accounted for any of it, or had been, in any way, personally or fiducially, privy to either of the County Court settlements,—denied that any of the respondents had been privy to either of the said settlements,— admitted that, when all of them were ignorant of the character of the sales, and of the power to sell, and of the persons who sold, and when they were all infants and the three females also covert, the male respondent and the husbands of the females had received from McKinney what was said to be their respective portions of the proceeds of the sales, but received all they thus got in insolvent and depreciated paper, because "McKinney had been insolvent many years, 'and, in these circumstances, they received from him what 'they could get." "What they did receive, was not receiv-'ed as a confirmation of those sales, for they did not 'know any thing on the subject of the illegality of the said 'proceedings." "They knew simply, as children, that land 'in Ohio had been sold, by whom sold and by what authority, 'were matters about which they were in entire ignorance; 'nor did they ever become possessed of the knowledge 'of their rights until a short time before the said action of 'Ejectment was brought." And the answer also makes an Exhibit of the Record of said action, and pleads its conclusiveness in this case.

At the October term, 1852, the Court, waiving a decision on other points, decided that the statute of limitation applied to the facts, and that, by its operation, the possession had "*ripened into a legal title in fee simple*," and therefore decreed a perpetuation of the Injunction to the judgment in Ejectment and *to all disturbance of the possession by suit or otherwise.*

And thus by false pretence of a purpose to proceed for the assessment of improvements, and by artfully and wrongfully bringing a new suit in a State Court *without surrendering possession*, and thereby suspending Execution for more than eight years, the Appellees have, at last, defeated the rights of the Appellants and nullified their judgment by an unprecedented decree on grounds certainly most extraordinary, and, as we think, palpably indefensible.

Preliminary to a consideration of the decree itself and the general merits of the litigation, we will premise that neither the original nor the amended bill exhibits any available right to the land as adjudged by the court below.

The Bills are multifarious, as to parties we are strongly incline to think, but assuredly as to subjects. The Court below endeavored, rather elaborately, to show that there was no fatal multifariousness as to persons: its arguments and authorities did not apply to misjoinder of subjects. As to

parties we feel so indifferent as to submit that matter, without further notice, to the judgment of this court. But we do insist that there is an essential majoinder of matter. Both the original and the amended Bills unite different and incongruous grounds of relief, and the two Bills are irreconcilable and non-conjunctionable,—the original, founded on an alleged equitable right and the amended Bill on pretended legal title. Such inconsistent grounds can not be united in the same Bill. And of such multifariousness the Court will take judicial cognisance, *sua sponte*, even without demurrer.—*Story's Equity Pleading, Sec.* 530.

But moreover, each Bill, so for as it seeks the land, shows on its face a want of title to relief. The original shows, by its allegations and the record it refers to, that the sales were void, and neither confirmable by acts without new conveyances for some new consideration, nor, either in law or in fact, ever confirmed or authorised bindingly by Infants, and *femes covert.* And the allegations of the amended Bill show that no title in fee simple, but, at the utmost, only a possessory right could have resulted from possession so long as to bar the right of entry, but not the mere right to the land recoverable by a writ of right. And here we may say, incidentally, that, had the Decree been right in other respects, *it was wrong in adjudging that the possession had matured the title into an absolute fee simple*, and wrong also in enjoining any suit on the mere right to the fee.

But more than this—the amended Bill, by admitting the judgment in Ejectment and the still recusant retention of the possession in defiance of it, showed that there was no available remedy under the statute of Ohio; *for the only object of that enactment was to supply a remedy in cases in which there was no other. But when an owner of the legal title, being in possession, is sued for the land he has a perfect defensive remedy, and if he fail in that he can not sue in Equity under the statute.* The principle and policy of the Bills *quia timet* do not apply to any such cases. Besides the judgment, *instead of establishing the legal title of the Appellees, proved the contrary.*

There is, however, a still broader and firmer ground for dismissing, on Demurrer or otherwise, each of the Bills,—that is, that, as to the title, all the matters contained in each of them were *res judicata* and not questionable by any such procedure.

The judgment of the Circuit Court of the United States in the action of Ejectment, *now beyond the power of judicial revision or question as to any matter involved in it*, decided that the legal right of entry was, at the commencement of that action in 1846, in the devisees of William Boyce, and

that they then also held the sole legal title to the land embraced in the present suit,—and, as indispensable to that decision, it was necessarily adjudged that, for want of power to sell the land, the conveyances by John Boyce and Gerrard McKinney were void,—that the receipt of the consideration by the devisees did not show a binding ratification of the sale nor any previous authority by them, nor confirm the invalid conveyances,—and also that their right of entry had not been barred by time. Consequently, according to that final judgment, no equitable right to the land enforcible by judicial remedy resulted from the contract or the payment; because, if there was no power to sell, the attempt to sell was not merely a defective execution of a power but a legal nullity, and because neither a void nor voidable sale could be confirmed or enforced without some binding contract in writing. And therefore when, in that judgment, Execution was suspended to give time to assert any Equity that might have resulted from payment or otherwise, the Court must have alluded only to the questions whether the Defendants were equitably entitled to restitution of the consideration, and whether they were entitled to interest thereon, and to pay for improvements, and might hold the land as security until any retribution that should, to that extent be awarded, should be fully made. Consistently with the judgment as rendered, the Court could not have intended more than this. But it could not, if it would, adjourn a legal question to any equitable forum, nor defer to any other court, new litigation on any legal point which had been adjudged by itself. Nor, after the expiration of the judgment term, had the same court any power to change its decision or qualify its legal effect in any respect.

We contend that the judgment is conclusive between the parties and their privies, and that nothing therein adjudged can be relitigated in this case. This is admitted to be a salutary and inflexible rule of law in all cases except the action of Ejectment. But the Circuit Judge, who presided at the hearing of the case below, has elaborated an ingenious argument to establish this assumed and most extraordinary exception from the principle of an admitted doctrine as applicable to one form of action as to another, and therefore universal when its *rationale* and policy are rightly understood and applied. I admit the cases cited by that eminent jurist and make reference to them as a part of this brief. But I can not admit that any or all of them, when analyzed, prove or tend to prove that, in this case, the judgment is either no evidence or inconclusive on the statute of limitations or any other legal question therein involved and adjudged. On the

contrary I, respectfully, but earnestly, insist that, on all those matters, that judgment here now is conclusive.

The adjudged cases and elementary *dicta* relied on to support the converse prove only that, anciently, when the action of Ejectment was a novel fiction, Lord *Mansfield* first said that, involving nothing more than the question of possession at the date of the fictitious lease, a judgment for the lessor entitled him only to the possession and did not any further decide the character or extent of his title to the land; and consequently it was no bar to *another action of Ejectment* by either party on a *new* and *different* lease. Courts have subsequently followed, and sometimes misapplied that technical and anomalous doctrine, even though the modern action is considered more a form than a fiction, and often turns on the more comprehensive question of title to the land incidently involved as necessary to prove the possessary right. And why, when the record shows that the title, and what kind of title was so involved, should not the judgment rendered thereon be evidence between the same parties in any other similar action involving the same title? The only reasons for the general doctrine adjudged by Lord *Mansfield* are: 1st, that, in different Ejectments, the nominal parties are different,—2d, that the recovery is only for a feigned term,—3d, that the "confession of lease entry and ouster" admits that the lessor was in possession when he made the lease and put the nominal lessee in, and this possession was different from that concluded by a former judgment on any other lease,—and 4th, no other title than that of the alleged possession is generally tried in this form of action. Is there any other reason? The fact that, in a suit for mesne profits, the judgment of eviction is conclusive of the lessor's right to the possession during the term alleged in his demise, tends strongly to prove that there is no other reason for Lord *Mansfield's* doctrine, or for its application otherwise than as he applied it.

And do any of these reasons apply to a case in wnich the record of an Ejectment shows that the title to the land, and the same title between the same parties, had been tried, and especially when, as in this case, *a different form of suit in Equity is brought admitting those facts and controverting the judgment?* On what rational or consistent ground can such a case be excepted from the almost universal rule that a judgment is conclusive between the same parties for the same thing or right; or how can such a case be included in the category of Lord *Mansfield's* class of cases? To do so, at this day, would seem to be an arbitrary dislocation of a system of rational jurisprudence which is fast maturing into the

consistency of homogenious science. And so thought the *Vice Chancellor* of New York, in *Vanwick* vs. *Seward*, 1*st Edwards*. That decision does not, as I think, essentially conflict with any of the cases cited in the opinion of the Circuit Court. That Court seems to have thought differently, and said that it had been overruled by the Chancellor and the Senate of New York. With due respect I cannot admit this. The *Vice Chancellor*, on the sole ground that the same question litigated between the same parties had been decided in an action of Ejectment, dismissed a bill in chancery,—on an appeal to the Chancellor he affirmed the decree, but on a different ground on the merits, saying, *obitur*, that he did not concur in the reason given by the Vice Chnncellor. But he did not answer or even notice the Vice Chancellor's reasoning, and only said, in passing, that the question was *res judicata*. We insist that it was not by a single reported case. On another appeal to the Court of Error the dismission of the Bill was affirmed: *Ch. Jus. Bronson dissenting*, delivering an elaborate opinion on the merits, and nevertheless, like Chancellor *Walworth*, in an *obitur dictum*, in a short paragraph, said the Vice Chancellor's notion had been too often overruled to admit of judicial discussion. But the majority affirmed the dismission *without intimating any concurrence with that dictum, and without expressing any reason for their affirmance against his opinion for reversal*. How then stands the opinion of the Vice Chancellor? Certainly not *judicially* overruled, — and who knows that the silent affirmance by the majority was not on the very ground on which the Vice Chancellor dismissed the Bill? The Reporter, in a note, intimates that it was. However this may be, his opinion was not overruled, and the worst attitude in which this Court can view it, is that in which it stood before any appeal from it.

Had the Appellees surrendered the possession according to the judgment of eviction and brought an action of Ejectment, their case would have been more like the cases adjudged on which they now rely than this case could be made to be. Yet even then we would have contended, with no little confidence, that, as the record of the judgment shows the *same parties* and *the same points* litigated and decided, it would have concluded further litigation in the same Court of any matter thus adjudged without misapplying the old rule attempted to be deduced from the old cases when Ejectment was more a fiction in all its phases than it now is in any phase. But, without such surrender, they could not sue in the form of that action. And they chose to hold on and sue in Equity. And even this suit could not have been brought

without the license of the Court which rendered the judgment. Without acknowledging the judgment and its full legal effect, that is that the legal title and right of entry are in the Appellants, they could not maintain, even in a State Court, a Bill in Chancery for asserting an available equity. No State tribunal could revise or enjoin a judgment of a Federal Court. But that Court, and that alone, might have enjoined its own judgment on some equity not cognisable in the action of Ejectment, and therefore not concluded by the judgment. The only other maintainable remedy was an appeal to this Court for revising and reversing the judgment. The Defendants in that judgment elected a Bill in Chancery, *and thereby acknowledged the correctness of the judgment so far as all legal rights between the parties had been or could be litigated by them.* The lessors having selected the Federal Court, as they had a constitutional right to do, for the investigation and decision of their claim to the land, no State Court had any jurisdiction to enjoin its judgment, or *interfere with any question, legal or equitable, involved in the ultimate judgment of that claim.* And after this suit had been improperly brought in a State Court, and vexatiously prolonged for many years *corum non judice*, the Supreme Court of *Ohio*, translated it to the Federal Court where it ought to have originated. And now it is, in all respects, to be considered as if it had never been in any other court. The translation of the case to be tried by the Federal Court which rendered the judgment necessarily implied that no other court had proper jurisdiction over it; and, properly respecting that decision, this Court must also recognise that principle.

Then suppose that this Bill had been, as it ought to have been, filed in the first instance in the court which rendered the judgment, — would that court have taken cognisance of it for any other purpose than the litigation of some equity as contemplated by its order suspending its judgment for that purpose alone? And could that Court, if it would, have judicially revised or changed the judgment as to any matter involving or affecting the legal title? Would it, for example, have revised or changed its decision on the statute of limitations? The Bill was not filed as a new and collateral Ejectment. It was no fiction on any feigned lease between nominal parties. But, like all ordinary suits, it was real, and between real parties, and for the same thing litigated and concluded as to the legal right by the judgment which it attacked and *sought to enjoin.* The sole object was to silence that judgment which could be done in one of two modes only,—appeal to this Court or an injunction by the Court that rendered the judgment. The Appellees chose the latter

mode, and must now abide by it, as an injunction said to be tried on equitable grounds only, and involving no question adjudged as to the mere legal rights of the parties. And so the original Bill rather seemed to contemplate in praying for an injunction, a specific execution of an alleged executory contract, or the full execution of an alleged power assumed to have been partially executed. For the same purpose of retaining the possession by *a perpetual injunction*, an extraordinary amendment was filed after the lapse of years, arraigning the decision of the court on the statute of limitations, claiming the legal title by long possession, and *quia timet*, praying for peace in a continued possession undisturbed by the judgment.

If such a collateral purpose could, in any way, have been effected in Equity, a collateral and independent suit, after submission *to the judgment*, was the only equitable or practicable mode. And even this, which could have been estopped by the legal operation of the unreversed judgment, was impracticable without personal citation of the nonresident adversary who never was so cited, and, as decided by the Supreme Court of Ohio, improperly making Tong, (a resident confidurate,) defendant, could not give jurisdiction to the State Court, and consequently *could not have given jurisdiction to the Federal Court, had possession been surrendered and the independent suit been attempted there.*

Such is the judicial *status* of the case,—a suit in chancery to get clear of an unsatisfied judgment by injunction or otherwise on equitable grounds not affected by it. In this phase of the case no matter affecting the legal title is open for reconsideration. But if it should be permitted to assume the phase of a new litigation of the question of legal title, even then the judgment is as conclusive as it could be in the first aspect.

The defendants and their privies in the action of Ejectment are the only complainants,—the lessors in that action are the only defendants,—the subject matter of litigation is the same,—the Bills acknowledge and describe the judgment, and also make it evidence by incorporation with the record of this case; and the only aim of this suit is to enjoin or elude that judgment. How then can this case be compared with a second and independent action of Ejectment on a different lease, between different parties, and on assumed different questions of title? And how can it be distinguished, in any essential attribute, from ordinary suits between the same parties for litigating the same title, and before adjudged between them?

Under the Federal Constitution the nonresident claimants

had a right to have their claim, in all its phases and incidents, tried in the Federal Court of Ohio: otherwise their undoubted right to institute their suit in that court, and their election to do so might have been frustrated by a new suit entertained by a different tribunal. No new suit questioning the judgment could have been maintained in any court; and by still retaining possession, and abandoning an appeal, the unsuccessful party acknowledged the correctness of the judgment and gave to it final and irrevocable conclusiveness; and consequently, having no available remedy at law in the same court, their only relief then was on some equitable right consistent with the legal effect of the judgment on all the questions involved in it and concluded by it. And such a Bill was *only a continuation in the same court of a litigation between the same parties of their claims to the same land.* The entire controversy is a drama, consisting of two acts: 1st, the trial of the legal title; and 2d, the trial of the equitable right; and it is as much one litigation commenced by one party and continued by the other in different forms, as a trial on Ejectment and a Bill in Chancery in the same court by an unsuccessful defendant to enjoin the judgment on some equitable matter unadjudged could be the same continued litigation. In this latter case, no jurist would pretend that the same court, in considering the new aspect of the equitable right, could revoke or change its judgment as to any legal matter adjudged in the Ejectment. Why is not the judgment in the case now before this Court equally conclusive and intangeable? In the suppositious case, the action was Ejectment, as in this case. But still the rule that one judgment for the same thing between the same parties is conclusive, applies equally to each of those cases of Ejectment, and in neither of them does the assumed exception of Ejectment have any application or force. Then how can it be pretended that the hypertechnical, and often perverted, authorities we have been considering can be made to apply to the facts of the case so as to make it an exception from the rule in all other classes of cases? I can see no way of escape from the conclusion that the record of the judgment is evidence in this case, and is here now as conclusive as to all questions involving the legal title as any other like judgment in any other form of suit. And why should it not be as much so as it would be in a suit for mesne profits?

Then, whatever may be thought of the superannuated exception of the action of Ejectment urged so much here as a forlorn hope, we feel that we may now rest satisfied that it can not apply to this case; and therefore that the only questions open for judicial consideration are such as may be purely

equitable, and unadjudged in the Ejectment. But however all this may be, it can not be denied that the judgment in Ejectment is evidence of the lessor's possession when he made the lease, and of his legal right to restitution of possession. But no such judgment could have been rendered if the right of entry had been barred by any statute of limitations. Consequently, the record of that judgment must be proof that the court decided in that action that the right of Entry was not barred by adverse possession. It is, between the same parties, proof of this if it prove nothing else. And if this court concur with us in this, it will not revise that decision on the statute, but will hold it now conclusive between these parties, and no case cited against us shows that, even if the defendants in this action had been actually evicted under the judgment and thereupon had brought another cross action of Ejectment, the record of the judgment would not have been admissable to prove that the lessor's right of entry had not been barred by time when the first action was instituted. They indicate only that the judgment would not prove the character or extent of the title to the land. And the reason for that qualification would be inapplicable to this case, because the record shows that, as the occupants had been in possession more than twenty-one years, the lessor had lost his right of possession unless his title to the land had been best and some saving in the statute had prevented the running of the statute. On this ground, the judgment is proof of the decision of every legal question involving as well the title to the land as the possessory right, *and the more especially as this is not Ejectment, but a suit in Chancery.*

But, not knowing what will be the opinion of this Court on this preliminary matter, we will reconsider all the legal questions adjudged in the action of Ejectment, beginning with the statute of limitations.

1st. The cause of action occurred under the statute of 1810, whereby nonresidence was made a saving disability. None of the successful lessors had ever resided in the State of Ohio. The only question therefore is, whether their continued nonresidence protected them from the statute when their action was brought.

The Supreme Court of Ohio decided, in a series of consecutive cases, that the disability of nonresidence continued a statutory saving when the act of Ejectment was brought in 1846. And so also the Circuit Court, consisting of McLean and Leavett, decided in that action. But,—after this fishing case had been vexatiously delayed for ten years, and just before its inevitable hearing,—the same Supreme Court, con-

sisting of new Judges, elected for a short time by the people, is now claimed to have decided, as providentially as they could have done in a moot case gotten up for this case, that all those former decisions, so long settling a doctrine acquiesced in by the local public, were wrong. And the same Federal Court, consisting of Swayne and Leavett, submitted to this last decision as the authoritative exposition of the Ohio law of limitation.

For the sake of uniformity and harmony, this Court, as an act of policy and comity rather than of judicial duty, *generally* conforms to "*the settled*" construction of State Constitutions and State Statutes by the State Judiciary. But the cases recognising this as a general rule of practice, show that it is subject to many limitations and qualifications.

In Elmendory vs. Taylor, 10th Wheaton, 152, the Court says that it will "*in general*, adopt State construction."

In 7th Wheaton, 361, "a *fixed* and *received* construction" considered a part of the Statute construed: and the same in 11th Wheaton, 361.

In Green vs. Lessee of Neal, 6th Peters, 297, the Court says that, if a State Court change its construction, the National Courts will conform to the change, *not by a single decision, but by a series of decisions, settling* the rule: and adds the following lucid explanation: "While this Court pays *great a-* ' *tention* to the *settled* construction of the laws and constitu- ' tion of a State as the same is shown by the *uniform* and ' *settted* decisions of the courts of the State, *it can not admit* ' *the authority of cases not of this description.*" And in Graves vs. Slaughter, 15th Peters, 489, the Court virtually repeated the same thing in disregarding a Chancellor's decision affirmed by a divided court.

And in the late and yet unreported case of Gelpeki vs. Dubuke, this Court said that, "although it is the practice of the court to follow the latest *settled* adjudications of the State courts giving construction to the laws and constitutions of their own States, it will not necessarily follow decisions which may prove *oscillation in the course of such judicial settlement.* Nor will it follow *any adjudication to such an extent as to make a sacrifice of truth, justice and law.*"

These extracts sufficiemtly define the general rule of practice, and the many rational exceptions to it.

And, as thus adopted and applied, how does this politic rule apply to this case? Is the last and solitary decision the "*settled* and *received* construction" of the statute of limitations in Ohio? Can this court *judicially* say this? Is it any thing more than "oscillation *in the course* of such settlement"? And could it be believed that Justice *McLean*

would have turned his back on his own decision, and a series of State confirmatory decisions, and bowed to this as a final, authoritative, and conclusive settlement of the construction? Would he, in the same case involving equitable rights, have retracted his decision between the same parties in a legal contest about the same land on the same evidence, and thus signally have illustrated the vulgar notion of "*the glorious uncertainty of the law*"? or would he not, ought he not to, have said: "Having decided the question by a judgment supported by the long settled and universally received doctrine of the State tribunals, and that decision resting as the law between the parties until it can never be changed or disturbed by appeal, I can not if I would, and would not if I could, revoke it, and especially in the same litigation continued in Equity at my own suggestion between the same parties"? And, had he felt authorised to change, would he not have chosen to stand erect *super antiquas vias?* And we insist that, whatever might be thought of that decision, it must, under all possible mutations, *be held to be the law of this entire case in all its phases.*

But was it not right, not only because it conformed to the then "settled" and "received" State construction, but also because that construction was right?

An act of 1810, made "beyond seas," constructively synonimous with nonresidence, a saving disability. All the lessors, except John Boyce, (and the judgment was against him,) were nonresidents of Ohio, when this cause of action first accrued, and have continued so ever since. As to that disability, therefore, the limitation never began to run as long as that saving remained unabolished. And we contend that, as to causes of action *accruing under the act of* 1810, the saving of nonresidence was never abolished until the 4th of July, 1847, after our action of Ejectment was commenced. Although the statutes of 1824, 1826, 1830 and 1831, in prescribing *future* limitations, and modifying former ones, left out the saving of nonresidence,—yet they all seemed to intend that the statute under which the cause of action had accrued should govern *as to saving disabilities. The act of* 1826, *expressly so provided*, and neither the act of 1830 nor that of 1831 repealed that reservation; on the contrary, the act of 1831, in force when our Ejectment was brought, contained the following proviso: "That all causes of action not heretofore barred which *subsisted or accrued* during the times 'those acts were in force, shall commence within the times 'therein limited, and not after; and all such actions shall be 'barred after the expiration of the several times allowed for 'their commencement *according to the provisions of said*

'*acts respectively*, and their amendments." This includes the act of 1810, and, of course, guarranteed the right to sue for land at any time not barred by that act and its "amendments." Our cause of action, accruing under that act, might, so far as disabilities are concerned, be sued on as prescribed by it just as if no other act had repealed any of its provisions. If the proviso does not mean this, and nothing more nor less, the only reason why must be the concluding words, "and their amendments." But the amendments of the act of 1810, had not repealed the saving of nonresidence so far as the cause of action had "accrued *or* subsisted" under the act of 1810. "Accrued *or* subsisted" necessarily imports an alternative,—that the cause of action must either have "accrued *or* subsisted under some of the modified statutes. And consequently, if the cause of action accrued, for example, under the act of 1810, that act should govern as to its savings, although *the time* was altered, and even if the cause of action did not subsist when the act of 1831 was passed. To limit the proviso to causes of action then subsisting would obliterate the express alternative (*or* accrued), and impute to the legislature the folly of using inconsistent, superfluous and delusive expletives; and would, moreover, frustrate the purpose of continuing, by successive legislation, the savings of the statute under which the cause of action had accrued as indicated by the various statutes considered in *pari materia*. To make the proviso consistently operative in requiring a suit on a cause of action accruing under the act of 1810, to be brought within the time prescribed by the act of 1831, and in barring it, unless brought within the time allowed by the act of 1810 "and its amendments," the time, and not the disabilities, must have been contemplated as changed by the amendatory acts. *And, as we understand them, neither the late opinion of the Supreme Court of Ohio, nor that of the Circuit Court now under revision, judicially decided any thing else or more.* This, when applied to this case, cuts off the plea of infancy, but does not touch that of nonresidence on which we rely. When our cause of action first accrued, the appellants were nonresidents, and, although laboring then under other disabilities, the limitation did not commence running as long as the disability of nonresidence continued, or until that disability was abolished by the act of 1846. This significant repeal of that disability, *allowing only a few months to nonresidents to sue*, must be deemed a recognition or a re-enactment of it until the 4th of July, 1847; after which, *but not sooner*, it should cease to be available. Its availability, until that enactment, seems to have been recognized by the Judiciary and Legislature of Ohio; and that act, therefore, only echoed that fact and the felt policy of cut-

ting off that disability in a short time. And this constructive recognition or temporary re-enactment of the disability is made almost certain by allowing to nonresidents rather more than a year to sue, thereby *admitting their existing right to sue, as the law then stood, without any limitation as long as the disability continued.*

The following is the provision of the act of 1846: "That so 'much of any act for the limitation of actions heretofore 'passed and now in force as excepts or saves from the opera-'tion thereof the rights of any person entitled to have or 'maintain any action of Ejectment for the recovery of any 'title or possession of lands, tenements or hereditaments on 'account of such person being nonresident of this State or 'beyond sea, be and the same is hereby repealed: provided 'that, *as to causes of action which have accrued*, this act shall 'not take effect till the 4th of July, 1847."

The letter of this statute, and the fact that the Legislature deemed the enactment of it necessary, imply the belief that nonresidence was still a legal disability, as had been adjudged, and has since been ratified by the Judiciary. And why else did the act provide that this disability might be available for a prescribed future period?

And this construction of the act of 1846 harmonises with the spirit and provisions of the acts of 1830–31, as already interpreted. *It is a clearly implied extension of the disability.*

The prolongation of the disability by the proviso, settles the question in favor of the Appellants concurrently with the decision of McLean and Leavett, who pronounced the judgment in the action of Ejectment. *And that judgment, so far as nonresidence may effect that form of action, has not been since overruled or shaken by any State Court of Ohio.*

Then, even if the question be now open for consideration in this case, we feel authorised to conclude that this action is not barred by any rational, consistent or authoritative exposition of the local statutes of limitations.

Admitting, for the sake of argument, that Justice McLean's opinion did not conclude the questions adjudged by it, the next question for consideration is, that of the power of the Executors to sell and the effect of the sale as made.

Alluding to his wife and younger children, and suggesting the reason why he could not specifically devise to each of them an equal portion of his estate in severally, the Testator directed that it should, after his death, be equally divided, by sale or otherwise, as might be best, considering the education of the uneducated minors out of their portions. This certainly did not devise the title to the Executors. Nor can it be fairly so construed as to leave the title undevised, and

as, therefore, descending to all his heirs incumbered by his widow's dower. A devise of land, to be equally devised between A, B & C, would certainly pass the legal title to them as tenants in common. And so, therefore, the devise in this case passed the legal title to the devisees as tenants in common to be equally divided by sale or partition. No express power to the devisees to make partition or to sell was necessary. That power was incidental to and resulted from their ownership. Nor was there any apparent or presumable motive for giving to the Executors power to elect for the owners the best mode of division, whether by sale or partition, nor power to sell or make partition. Consequently, no such power was expressly granted, as it would probably have been had it been contemplated to divest the owners of that resulting discretion and power.

Nor, even without this opposing probability, is there any sufficient ground for any such implled trust in the Executors. Why should the Testator restrict the dominion of the devisees over their own property? Why should they not have been permitted to elect for themselves whether it should be sold and the proceeds equally distributed, or whether it should be divided equally between them in kind? And why should other persons, some of whom were strangers to their interest, and *the others of whom were interested against a majority of the devisees*, have been impowered to make the election for them, and to sell or divide their estate without their co-operation or concurrence? Infancy is no answer; because the infants could have acted more safely and satisfactorily through their legal representatives and next friends, or a court as their judicial curator and guardian. And this may be presumed to have been the Testator's provident expectation in leaving, as was most safe, natural and just, the division to the devisees themselves. And if he did not so expect, why did he not otherwise provide? If he intended to take the inherent power and discretion from the owners and delegate them to *strangers* and *antagonists*, why did he not say so? Power over land is never vested *by law* in Executors. No such power is involved in their fiducial trust, or is incidental to their legal functions. It is a special trust which must be either expressly or impliedly delegated by the Will. When the Will, *without devising the title, directs the sale of land for paying debts* or *legacies*, and fails to say who shall sell, the law implies that, as the Executors have to account for and pay the debts and legacies, the Testator intended that they should execute the power to sell, and thereby obtain the distributable fund as prescribed. But we know of no case in which it was ever

adjudged that they had such power over land *devised jointly to others for division by sale or otherwise.* None of the cases cited for the Appellees indicates any such opinion. In all of them, the title was *undevised* and the sale was *peremptorily* directed for payment of legacies. They only illustrate the rule as just defined. And the cases of *Benthom* vs. *Wiltshire*, *Patton* vs. *Randall*, *Ward* vs. *Owen*, and many others, limit the implication by the horizon thus defined.

But while, in the absence of an express appointment, the presumption is strong enough that the Testator intended that the owners,—to whose joint use he devised the legal title, restricting their dominion only by directing a sale of it for more convenient division,—should control the sale; it is much stronger that he did not intend to interfere with their volition and inherent right when he merely recited the *resulting* fact that the division might be equalised by partition or sale, *as might be best for the devisees as absolute owners.* And, as truly said by Sir *Thomas Plumer* in *Patton* vs. *Randall*, 1 *Jac & Walk*, 189, there is *no reported case in which the infancy of the devisees affected the presumption as was claimed as any ground for an implied transfer of the power and option of the Executors.*

In this case, the Will devised to the devisees the Testator's whole estate, including the land now in question, which, without his suggestion, as well as with it, could be equalised between them by their own optional partition or sale of it. The Will passed the title to the personalty as much as to the realty, subject only to the provisional right of the Executors to appropriate the former, if needful, to the payment of debts, if there had been any requiring such an application. With the exception of this single qualification to the extent of this contingent purpose, the Executors had no more interest in the personal than in the real estate, and no more authority over it. The legal title being vested by the bequest in the legatees subject only to the consent of the Executors who, so far as there were no debts, could not withhold it, the necessary division of the personalty resulted to these owners, and no others had any right to elect for them, and without their authority or concurrence, whether it should be distributed by sale or by partition in kind. And the *dictum* in the case of *Tylden* vs. *Hyde*, (2 *Sim. & Stew.*, 238), cited to show the contrary, is entitled to no such effect. In that case, *without devising the title*, the Testator *directed* the sale of his estate, personal and real, and bequeathed the entire proceeds *to legatees* to be equally distributed among them; and, of course the Executors, whose legal duty it was to pay the legacies distributively, had the implied power to make the required sale

of both classes of property, but not, as here claimed, because personalty was a portion of the aggregate fund which was to be distributed, but because the gift was not of the title to specific property, but of money to be raised by a sale of the property, and was therefore a *legacy* to be paid by the Executors, and not a *devise* vesting in the beneficiaries the title to both realty and personalty, and, consequently, the *jus disponandi* also according to their rights as joint owners under the Will. And *for that reason* the *Vice Chancellor* decided that the Executors had the implied power to sell and convert the specific property into money and distribute the money among the legatees according to the Will. And, after so deciding, *on that ground alone*, his auxiliary *dictum* that his conclusion,—*needing no corroboration*,—was strengthened by the fact that, in the sale, personal and real estate were commingled into one common mass, was a superfluous and illogical assumption, idle and indefensible in that case, and totally inapplicable to this case, in which not only the title to the whole estate passed by the Will, but the distribution depended on a choice of means very important to the devisees, and naturally incident to their exclusive ownership. But even if the Executors had implied power to sell, the sale as made was void.

As a sale was not peremptorily directed, but was made contingent and dependent on the personal discretion of the Executors selected and nominated for the wise and safe exercise of it, the concurrence of all of those appointees was necessary to the validity of it.—*Watken's Ex'rs* vs. *Wootaridge's Heirs*, 3*d Bibb*, 349,—and other cases cited in my colleague's Brief. That Kentucky case is essentially analogous to this, and only recognises a principle of the common law authoritatively settled in England and America. And such a personal trust may be executed by all to whom the Testator confided it, even though some of them may have renounced the Executorship.—*Keates* vs. *Clavering*, 14*th Vez*, *jr.*, 432. All the nominees must therefore exercise such discretionary power.

But if, in such a case of personal confidence and preference, the Executors who act as such may execute such a discretionary power, still, unless *they* co-operate, the sale will be void,—for the act of one without the concurrence of all, is as destitute of authority as it would have been had there been no power in all or any of them. It is not therefore a defective execution, but a non-execution of a power, and is necessarily therefore null and void. Such a power could not be executed by proxy: a personal trust can not be transferred or subrogated. The participation of the Executor in the sale

and conveyance was unavailing without that concurrently of the Executrix also. She seems to have been either neutral or recusant in the contract made by the Executor and McKinney. As her husband, McKinney had no legal authority to act for her or in her place, his officious act was, in no sense, her act. Her marriage neither extinguished, merged, nor suspended her power which she was, in law, as competent after as before her marriage to execute. A married woman, having legal capacity to act as an agent, may execute a power, whether collateral or *appendent;* because, whatever may be the character of the power, she acts as the donor's agent, and her act is his act, and derives, from him, its legal effect, even as to her own interest devised to her subject to the power, in the execution of which, therefore, she acted, not as a *feme covert*, but as agent.

There is no pretence for presuming that the Executor and McKinney sold or conveyed by the authority of the devisees; because, all of them laboring under disabilities, none of them could have been bound by the act of creating agents, nor by any implied ratification of their acts; *and because the conveyances, purporting on their face to have been by the Executors under a supposed testamentary power as such, estopp all parties to them from the contradictory allegation that the sale was made by the agents of the devisees; and as to which agency there is neither* allegation nor proof. The sale and conveyances were therefore void for want of authority in the vendors, even if the Will should be construed as giving to the Executors power to sell and convey. There is neither proof nor presumption that the Executrix authorised her husband to act for her; and, even had she done so, his act was void because she could not *elect* and sell through an agent. She could not especially delegate the power of election. And even, though she might have delegated the mechanical act of making an executory sale on terms fixed by herself, yet her election to sell and her terms could be bindingly available only by her Deed.—*Sinclair* vs. *Jackson*, 8*th Cowan*, 582.

Nor has there been any confirmation of the sale, nor estoppel against the right to disavow the sale and recover restitution of the land as adjudged in the Ejectment.

The sale, not being merely voidable, but absolutely void, as a legal nullity, would not be confirmed by any apparent acquiescence, nor by any act which has ever been done. There was, in fact, no voluntary and intelligent acquiescence. There is neither proof nor allegation that the infant and covert devisees understood their rights or knew the character of the sale, or how and by whom or by what authority, it had been made, until the discovery was accidentally made a short time before they instituted their action. They all so aver un-

der oath; and that solemn appeal to God is sustained by intrinsic probability. Therefore, had they been competent to bind themselves, their forbearance would not have operated as an estoppel or a confirmation. But their continued disabilities leave no semblance of any such legal presumption or equitable imputation. Nor did their receipt of portions of the consideration confirm the sale, because they did not thereby intend to confirm an illegal and void sale; and because, even if they did, that simple fact could not create an enforcible confirmation against their will, in either a legal or an equitable *forum*. HAD THEY THEMSELVES MADE THE SALE, THEIR RECEPTION OF THE PRICE WOULD BE UNAVAILING FOR A COERCION OF CONFIRMATION OR SPECIFIC EXECUTION. But there is no sufficient proof that they did actually receive the entire consideration. They deny that they did, and aver that what they did receive was in depreciated paper and notes on insolvent debtors of Gerrard McKinney, who, *in great haste*, sold their land improvidently as they will ever believe, NOT FOR THEIR BENEFIT, BUT FOR HIS OWN USE, TO WHICH HE APPLIED IT FOR HIS OWN RELIEF FROM IMPENDING RUIN. The *exparte* settlements by County Court Commissioners do not negative that averment. Nor should we presume that Mrs. McKinney, as Executrix or Co-Guardian, was a voluntary, actual, or responsible party to those formal settlements. But the presumption, in fact as well as in law, is that the active and intermeddling husband, (*who hastily sold to avert his own impending insolvency*,) was the sole recipient and controlling manager in the whole transaction from the beginning to the end. But had she herself actually and understandingly received her portion of the money for her own use as devisee, even that fact would have neither confirmed nor bound her to confirm the sale as Executrix or devisee. The remedy of the purchasers was against their vendors, John Boyce and Gerrard McKinney. Or if, by equitable substitution, they could stand in the shoes of their vendors, they would only be entitled to a set-off, against rents, of the amount which the devisees actually received in money or its value.

For improvements, of whatever character, they are entitled to nothing more, *as petitioners in Equity*, than *ameliorations* if,—by the expenditure of money and labor,—the value of the land has been enhanced. Because, knowing as they ought to have known from the Will, which they ought to have seen, and therefore must be presumed to have known, that they were, without authority and against law, buying the land of ignorant and passive infants, they have no pretence of claim to the equitable protection or consideration of *bona fide* purchasers on the faith of a good and honest title.

But if our clients shall obtain a proper measure of rents, and be held liable only for ameliorations,—preferring honor to technical law,—they desire to account *even for the whole amount paid to Gerard M'Kinney for the land.*

If a reversal of the judgment appealed from shall place the parties in this relative attitude, and, *at last*, thus restore them in *statu quo* as nearly as possible, the Appellees,—unjustly withholding the land, so vexatiously and so long,—will have no cause to complain that, at the close of half a century's spoliation, infants and married women are restored to their inheritance consecrated by the memory and the blood of their revolutionary ancestor.

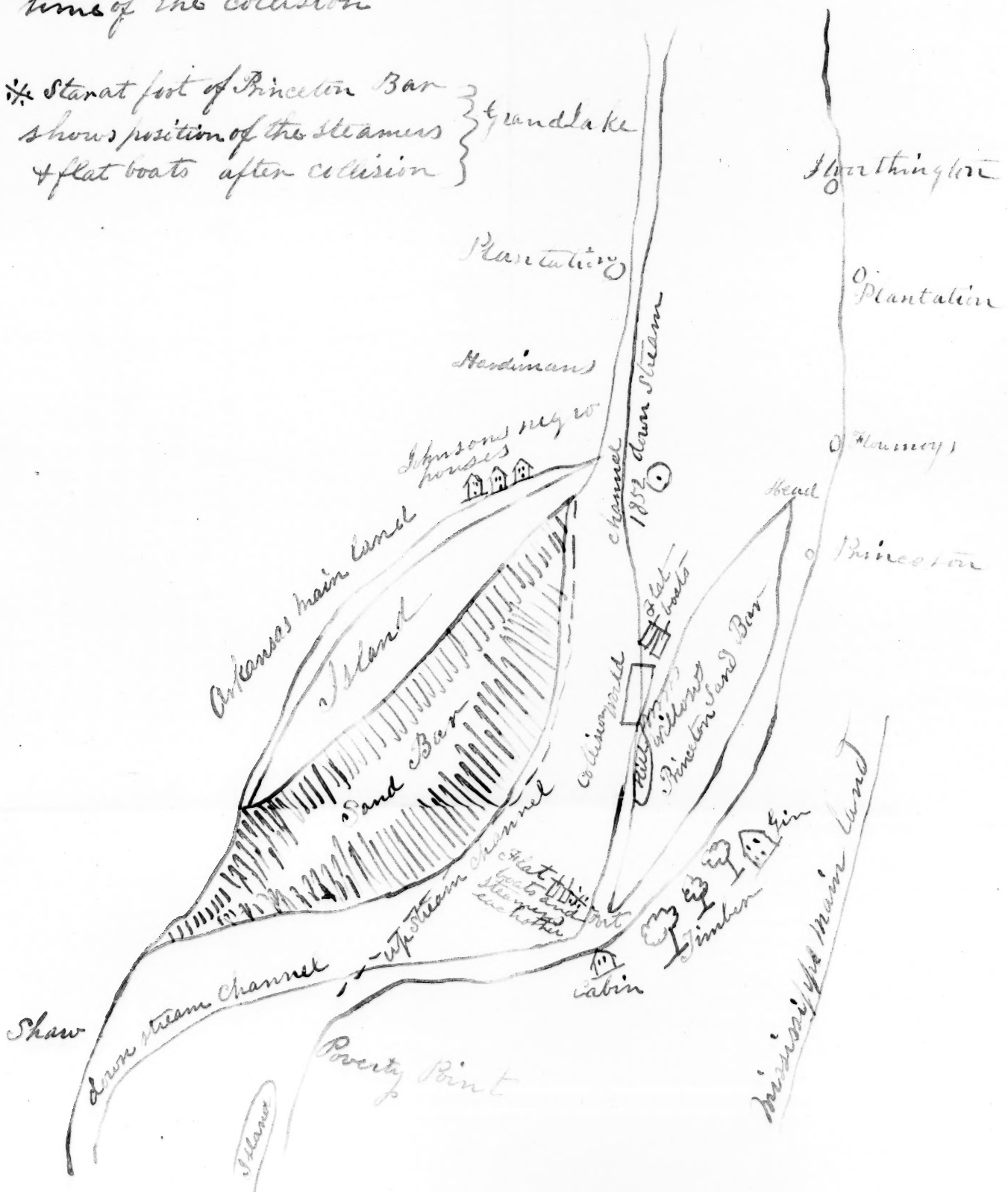
G. ROBERTSON.

Pla. 243

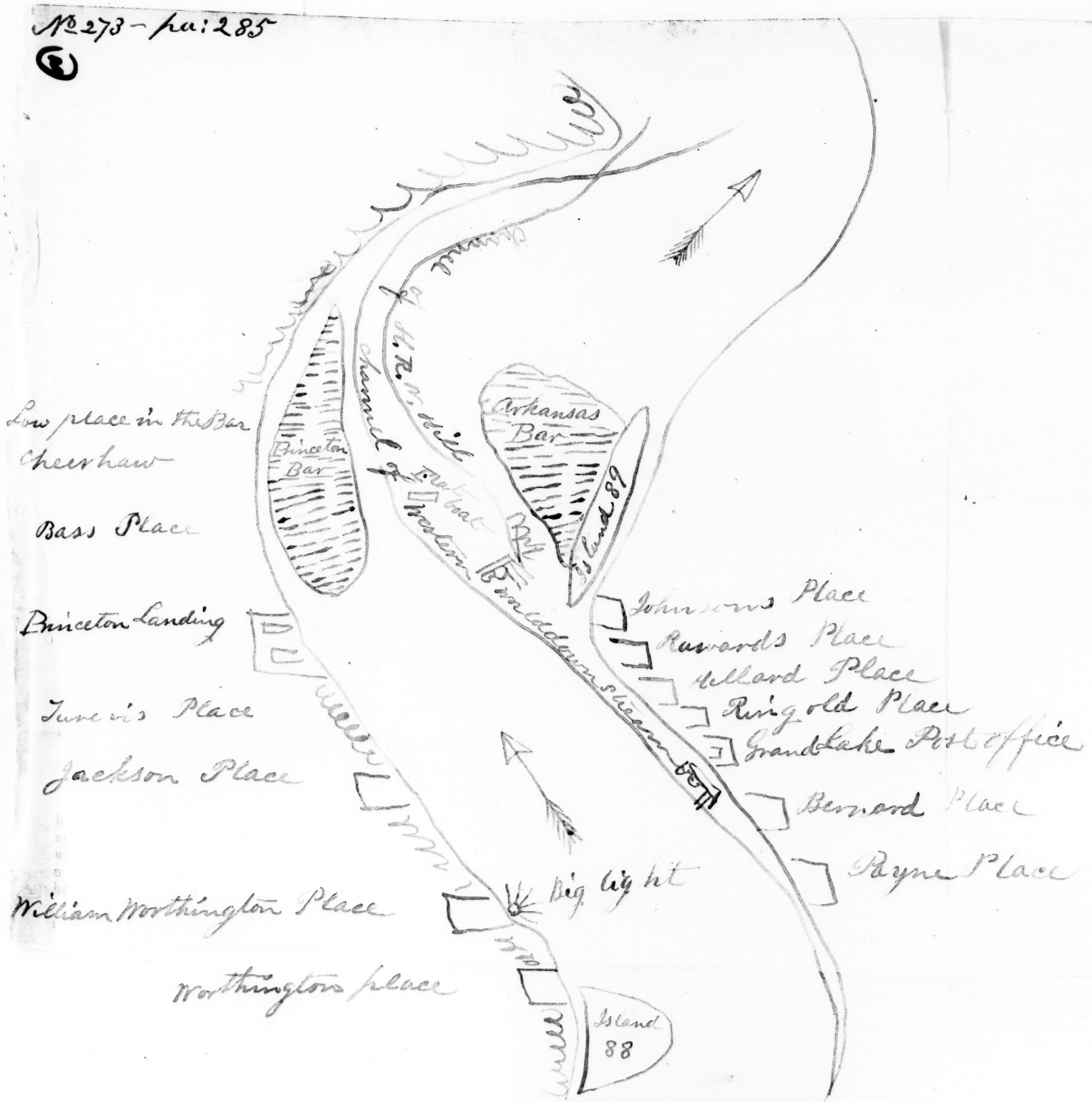
① ○ Shows the place where I was when I first saw the "Hell"

Both sand Bars covered with water in 1852 at the time of the collision

※ Star at foot of Princeton Bar shows position of the steamers & flat boats after collision } Grand Lake



№ 273 – pa: 285


Low place in the Bar
Cheerhaw
Bass Place
Princeton Landing
Princeton Bar
Channel of U.S. mail steamboat
Arkansas Bar
Island 89
Johnsons Place
Ravards Place
Willard Place
Ringold Place
Grandlake Post office
Bernard Place
Payne Place
Tunnis Place
Jackson Place
William Worthington Place
Worthington place
Big Light
Island 88

(3)

Elevation of Bridge

MS 265 Gilman vol. xv. City of Philadelphia
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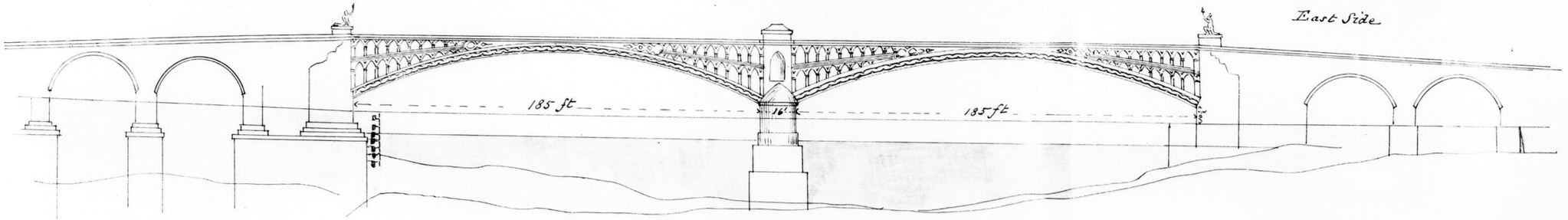
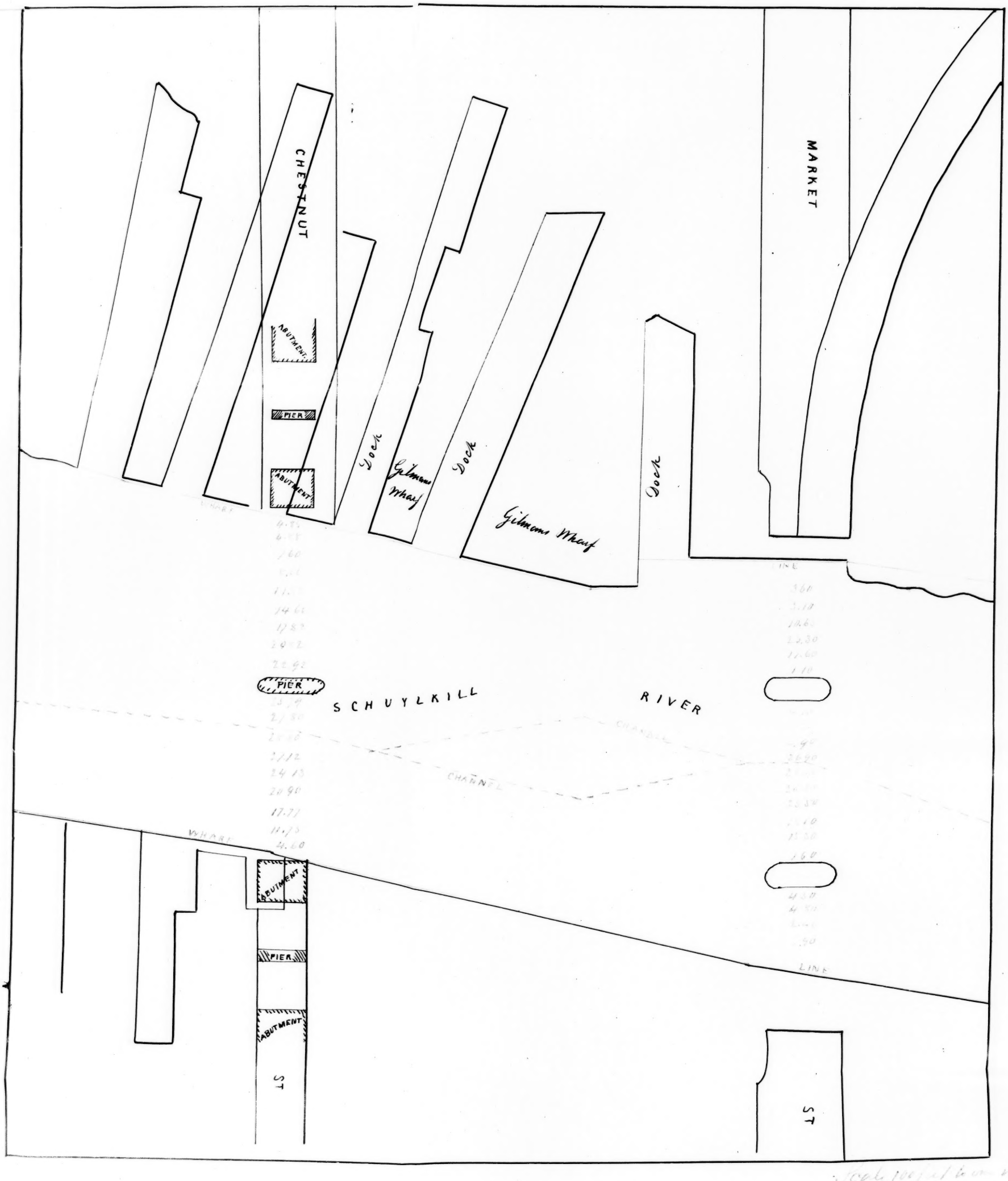


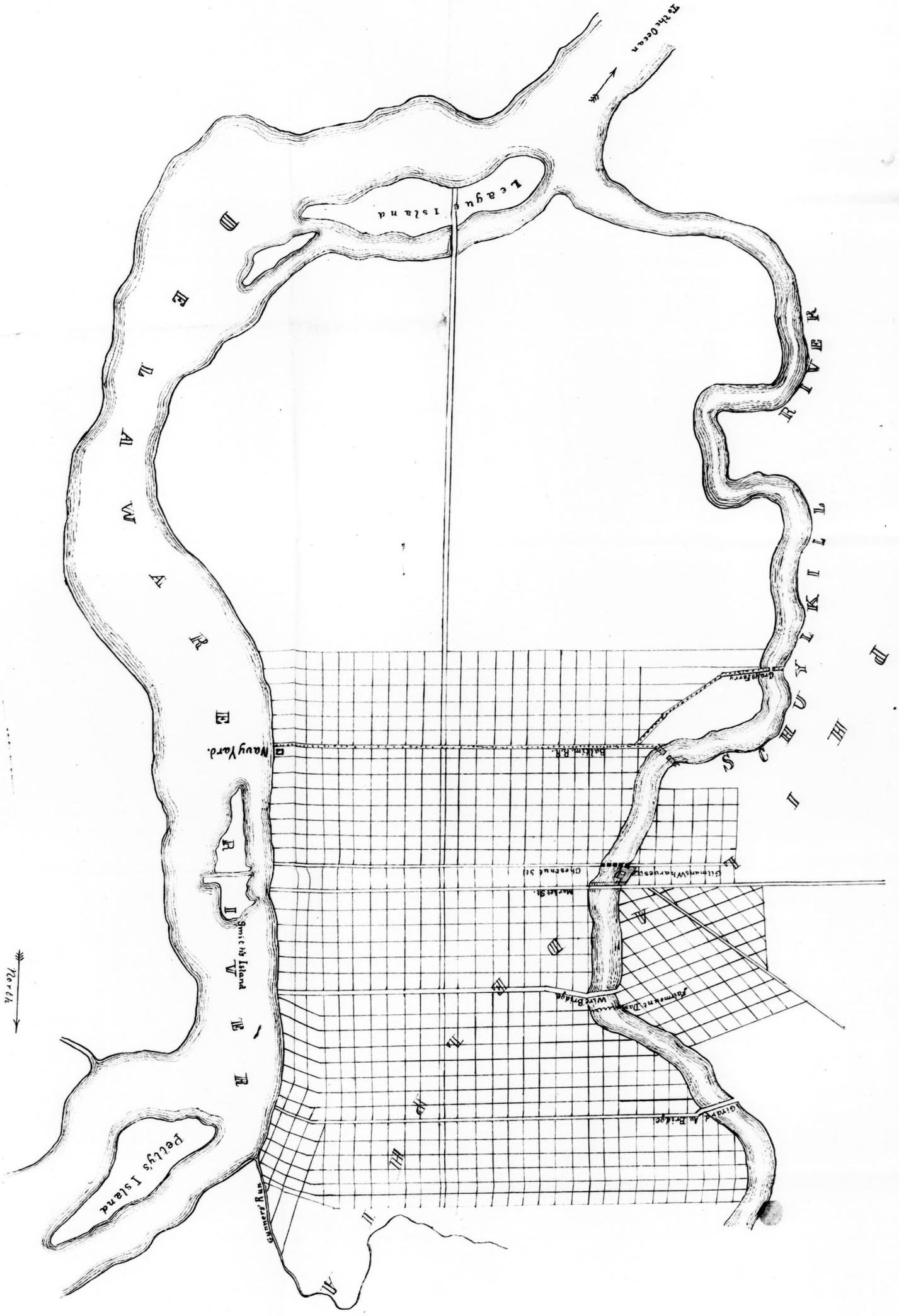
Scale about 40 feet to one inch

Drawing of River and Location of Bridge



No. 265. Gilmans Wharf City of Philadelphia

Scale 100 feet to an inch.


To the Ocean
League Island
Navy Yard.
Gunboat Ferry
Balt. & R. R.
Market St.
Chestnut St.
Githarts Mill Bridge
Gunpowder Run
Petty's Island
North
DELAWARE RIVER
SCHUYLKILL RIVER